Supreme Court, U.S.
FILED

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No. _____

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In The

Supreme Court of the United States

JANTZ CLINKSCALE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States District Court For The Northern District Of Ohio Eastern Division

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I

Whether the search warrant affidavit in this case set forth probable cause for a belief that evidence of an assortment of federal crimes could be located on the premises to be searched where the affidavit also failed to allege a probable cause basis to link the home involved to any criminal activity.

II

Assuming a search warrant affidavit set forth probable cause, where the most essential averments made therein relate to events that occurred (if they did) more than twenty months before, absent a showing from which it can be inferred that whatever conditions existed then continued to exist, can a proper warrant to search be issued?

III

Whether a search warrant that purports to authorize a general or exploratory search for evidence of possible violations of a number of federal criminal statutes, based on the naked assertion that "drug dealers" keep such records and documents as were sought in this home, can survive meaningful scrutiny.

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To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioner, Jantz Clinkscale, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States District Court for the Northern District of Ohio, which judgment became final on February 27, 2002, when the Sixth Circuit Court of Appeals affirmed the lower Court's decisions. The time for the seasonable filing of this *Petition* was extended, by order of this Court, to July 12, 2002.

OPINIONS BELOW

The Opinion of the Sixth Circuit Court of Appeals, against which this *Petition* is directed, was issued on February 27, 2002. This *Opinion* is designated (**App. 1 to App. 2**), in the *Appendix To Petition*. The various written rulings made by the District Court are set forth in the Appendix at pp. 3-26 and 17-20.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the Sixth Circuit Court of Appeals, as indicated above, was entered on February 27, 2002. The jurisdiction of this Court is invoked under Title 28 U.S.C., §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principal provisions of the United States Constitution involved in this case are the Fourth, Fifth, and Sixth Amendments. The pertinent texts of each of these are set forth below:

1. **Fourth Amendment:** "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
2. **Fifth Amendment:** "No person . . . shall be compelled in any criminal case to be a witness against himself. . . . "
3. **Sixth Amendment:** "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

STATEMENT OF THE CASE AND FACTS

Jantz Clinkscale, the petitioner herein, was named on every count of a 31 count indictment. Ultimately petitioner entered a conditional plea of guilty to count 1 (Drug Conspiracy), count 3 (Illegal Possession of Firearm), count 7 (Income Tax Violation), counts 13, 18, and 23 (Structuring Financial Transactions), and counts 30 and 31 (Money Laundering).

In the wake of the conditional plea agreement, the issues reserved dealt with the Court's denial of petitioner's *Motion To Suppress and For The Return Of Illegally Seized Property* (**App. 3**), and the Court's rejection of petitioner's written exceptions to the denial of the Suppression Motion (**id., 128**). It was petitioner's exceptions that prompted the government to make the Motion (**id., 133**) that resulted in the Court's final Order dealing with the Motion being artificially altered. (**Id., 17**.) Ultimately petitioner was sentenced and is currently incarcerated.

The facts here are easily stated. The dispositive issue in this appeal relates to the Court's resolution of the petitioner's "Motion to Suppress and for the Return of

Illegally Seized Property". Of critical significance is the fact that none of the three (3) named sources, upon whom the affidavit placed critical, indeed dispositive, reliance were even credited in the affidavit with being reliable – a factor that was worthy of heightened consideration in any meaningful review. The same was true of the fact that while these alleged sources made personal references to the petitioner, none of their oblique references to the home searched even slightly tended to show any *nexus* between the home and any criminal activity. Also, while their contributions to the affidavit were central to the issuance of the warrant, it should not be overlooked that the warrant did not list any Title 21 drug offenses as being amongst the asserted crimes for which evidence was sought by the warrant issued to search this home.

This brings us then to the portion of the affidavit which the government relied on as having provided the sole, and indeed the only, basis upon which the Court could have relied in issuing the warrant. Here it was stated the warrant sought "evidence of violation of **Title 18 U.S.C.,** Sections 1956 and 1957, **Title 26 U.S.C.,** Sections 7201 and 7206(a) and **Title 31 U.S.C.,** Sections 5313 and 5324". Distilled, the evidence sought, which the Court inferentially determined there was "probable cause . . . to believe was now concealed" on the premises described, was denominated as "Attachment B," to the affidavit. This attachment was made a part of, both, the warrant and the affidavit (**App. 82-103**). The "attachment" itself *generically* described certain financial crimes of various sorts. Rather than evidence of any Title 21 drug offenses, what was sought was any evidence that could possibly be related to various non-specific financial crimes.

Here too, it should be noted that counsel is of the belief, and so argues, that even if it can be said that there was probable cause to believe, when the warrant was

issued, that Jantz Clinkscale was indeed guilty of any of the monetary offenses enumerated above (and that likewise is improbable), it would not then follow that there would also be probable cause to search Clinkscale's residence. This point is well made when it is understood the emphasis in the affidavit, and in the Court's Opinion, related to an effort to show a nexus between the home and drug activity.

In any event, a fair distillation of the search warrant affidavit shows it was based on information supposedly supplied by alleged sources as to various historical (*i.e.*, stale) events. More specifically, it was said (**App. 88**) that on *December 9, 1996*, two Hispanics stopped by the Missouri Highway Patrol were found to be in possession of approximately 25 kilograms of cocaine. Supposedly they told the officers, in an effort to curry their favor, these drugs were being muled by them to Youngstown, Ohio to another Hispanic at the Microtel Inn. Next, on *December 10, 1996*, "a controlled delivery" was made to two other Hispanics. One of these was Ariel Martinez-Castaneda.

When this drug-laden vehicle was again stopped in the Youngstown area, Castaneda was arrested. Now it is being said that he "had a cellular phone and a pager . . . [along with a piece of paper] which contained the name Jantz S. Clinkscale, 2934 Anderson-Morris Road, Niles, Ohio 44445-4332." (**Ibid.**) Further, we are told in the affidavit that Jantz Clinkscale's home phone number was "in the memory[1] of . . . [the] cellular phone" found in

[1] When this number was assertedly placed in the cellular phone's memory, or how long this number had been in the cell phone's memory, we were not told. This raises the specter that it could have been in the cell phone's memory for years. Since all calls made into, or from, a cell phone can be identified on the basis of the air time consumed, the

(Continued on following page)

Castaneda's possession. And Castaneda is credited with having made two calls from this phone. Another call, said to be an incoming call, which was not otherwise identified (*e.g.*, as to date, time, length of conversation and the like) was said to have been made by some unnamed and unidentifiable person. Its purpose was, according to the affiant, "to make arrangements to pick up a garage door opener from someone to store" the car in which drugs were being delivered (**ibid**). Significant here, there is nothing in the affidavit that provides any insight as to how the affiant could possibly know any of these things.

Even this is not all. The Affidavit (here being referred to) represented that more than five months later (after having been convinced it would be in his best interest *to sell* any ability he had to connect Jantz Clinkscale to drug activity, whether real or fabricated), Castaneda had a proffer session with agents of the government (**App. 89**). Doubtless, what was orchestrated by the parties to the deal involved the compromising of whatever charges had been, or potentially could be, lodged against Castaneda.

As put by Castaneda, it was on *November 29, 1996*, that he delivered drugs to Clinkscale. And, according to Castaneda, *December 10, 1996* was to be the "next trip" he and Clinkscale would have been involved in. Simply put, again according to Castaneda, he was only involved (if he ever was, since we only have his word for it) in alleged

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government's failure to connect Clinkscale's phone number on an air time basis to this cellular phone (for which there would have been a billing charge) tells us that *other than* the presence of Clinkscale's phone number in Castaneda's cellular phone's memory and a piece of paper with Clinkscale's address on it, the government was at all times aware they lacked any hard evidence that Castaneda ever had any phone contact with Jantz Clinkscale.

deliveries of drugs to Clinkscale on *November 19, 1996*, and on *November 29, 1996*. Significant too, while Castaneda is also credited with having stated he picked up money from Clinkscale on "four to five occasions" in Youngstown and that he "flew from California into Cleveland, Ohio and took a taxi to Youngstown" for that purpose, it should be emphasized we only have his indisputably belated hearsay word that any of this happened. (**Id., 88-89**.)

Also, it should be noted Castaneda is not even credited in the affidavit with saying anything about the home that was ultimately searched. Obviously then, beyond the isolated assertion that a phone number listed to Clinkscale was retrieved from the memory of Castaneda's cell phone, there is no reference whatsoever by Castaneda to the petitioner's home. As to when Clinkscale's number was entered into the cellular phone's memory, we were not told. Clearly, no one can say it was even in the year of Castaneda's arrest.

Significantly, while extolling and emphasizing various revelations Castaneda made in his April 24, 1997 proffer, concerning his asserted unconfirmable dealings with Jantz Clinkscale (who the affiant insinuated was the person to whom Castaneda intended to deliver the drugs), the affiant neglected to advise the Court that after having been rewarded by the government for implicating Jantz Clinkscale, Castaneda escaped from federal custody on December 23, 1997. This occurred less than eight (8) days after he reached the institution the Court was prevailed upon to designate as his place of incarceration. (*See* **id., 104.**)

Surely this is something the Judge that issued the warrant more than sixteen (16) months later, *i.e.*, in August, 1998, should have been told about. This follows

particularly since it can hardly be said that Castaneda's escape should be regarded as a non-factor insofar as the efficacy of the government having seriously vouched for his credibility and his reliability in the affidavit. Indeed, given that the Court was actually prevailed upon by the government and others to recommend that Castaneda's wishes be accommodated, and that he should be placed in an "intensive drug treatment program," this makes for a circumstance that should have been seriously reckoned with by the Courts below.

Next, the affidavit recites that one Marvin Reese, who likewise was in custody when interviewed, supposedly related what was (even if valid) more *stale* hearsay concerning his alleged dealings in 1997 with Clinkscale. Reese (although this was not stated in the affidavit) had himself been arrested, and later indicted (on January 8, 1998) along with others in a drug conspiracy (**21 U.S.C., §846**), involving a paltry quantity of drugs that were handled by multiple defendants. This fact alone belies Reese's unclad statement, so brazenly relied on in the affidavit, that he had purchased at least 20 kilograms of cocaine from Clinkscale between 1995 and November, 1997 (**App. 90-91**). This is particularly so since Reese was regularly using a phone that was being fully monitored by the government during this period of time. And we know, as did the government, that no references were made during Reese's monitored conversations to Jantz Clinkscale. We also know this to be so because if it were otherwise, surely it would have at least been mentioned in the affidavit or in Reese's superseding indictment, which he helped generate in the wake of revelations made by him after he had been cultivated by the government as a source whose interest in currying the favor of the officers was insatiable.

Still another person, said to be a "cooperating witness" and referred to as a "CW," is credited with telling the agents that "Clinkscale has been [in his opinion] a cocaine dealer since 1990." This alleged person supposedly added (also an opinion since he obviously did not seem to have personal knowledge) that "Clinkscale buys kilos of cocaine, cuts it with a cutting agent, which doubles the quantity and then sells the cocaine." (**Id., 91**.) Granted, this person nakedly asserts he had purchased "one-fourth kilo of cocaine from Clinkscale once or twice a week during 1994" (**ibid**). Additionally, this alleged person is credited with saying that around *November, 1997*, he observed "Clinkscale in possession of approximately two or three kilograms of cocaine" and in possession of "large sums of money," which he doubtless guessed came from cocaine sales (**ibid**). Significantly, and most assuredly, he did not say he had ever seen any of these items in petitioner's home. Indeed, he did not even claim he had ever seen this home.

Simply put then, with reference to petitioner's home, it could not be any clearer that other than the statement that Castaneda had Clinkscale's address on a piece of paper and had a cellular phone that supposedly had Clinkscale's home number stored in its memory, there is no other *asserted* connection made in the affidavit to any involvement of the home in the drug dealings discussed in the section labeled "Criminal Activity Detailed". (**Id., 92 *et al.***)

Significantly exposed, from a reading of the affidavit, is the depth of the deliberate effort made by the affiant in successfully finessing the Court into issuing these warrants, as well as the rather slipshod investigative techniques used. Consider in this regard the following inconfutable analysis of what occurred *after* the drug car had been given Castaneda. Here the affiant stated:

> Martinez-Castaneda made two telephone calls from his cellular phone and received one incoming telephone call on the cellular phone. The incoming call was to make arrangements to pick up a garage door opener from someone to store the Volkswagon Golf.[2]

(App. 88).

Also, it seems clear that the government actually conceded the "incoming call" referred to in the above quote did not come from any phone that could be connected to Jantz Clinkscale. For if it were otherwise, surely the effort to make this connection would have been made. On the other hand, *unless* we are to credit the affiant with simply being oblivious to certain realities, despite his professed expertise in these matters, then it must be understood that he knew precisely what he was doing when he crafted the affidavit and that he chose his words with care. And, the fact that the Court placed an invalid meaning on them is as much his fault as it is the Court's.

Another very specific charge made here is that Agent Gruver's affidavit not only shaded the truth, he actually misrepresented and distorted various specific references made in his affidavit. This is especially so when one considers the following segment of what can be viewed as a sort of preamble to the various allegations made in the affidavit. Here the Court was told:

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[2] How the affiant came to know the purpose for which these calls were made (if they were), we were not told. Nor was the Court that issued the warrant told how the affiant came to know this. Also, what is it about being a federal agent that empowered him to know, both, that there was an incoming call and what it was about? Worse yet, how do we know these assurances *did not* cause the Court to issue this warrant?

> I am familiar with the modus operandi of persons engaged in the illegal trafficking of controlled substances. *I have learned* that persons trafficking in controlled substances deal in large amounts of currency, profit from the sale, and attempt to legitimize those profits.

(Id., 87). (Emphasis supplied.)

Next, what was labeled the "Probable Cause" basis for the issuance of the warrant was sub-divided into three (3) sections. The most critical section, labeled "A. Criminal Activity Detailed," contained three (3) numbered divisions (*i.e., nos. 1, 2 and 3*). The *asserted* factual references made therein referred to an assortment of nebulous details. Clearly this was done in an effort to validate the affiant's belief that Jantz Clinkscale was a "drug dealer".

In our judgment, the reason no Title 21 offenses were included in the list of offenses for which evidence was sought could not be any clearer. On the other hand, if the Court *believed* the affidavit sought permission to search for proof of violations of Title 21 and he *believed* the warrant authorized such a search, then clearly the Court was deceived – which is bad enough. But even more than that is present here. Indeed, even if Title 21 offenses had been listed, the affidavit here failed to set forth any probable cause basis for a belief evidence of any illegal drug activity could be found in a search of this home.

II

In the segment of the affidavit that sought to detail the relevant financial history of petitioner, the calculations that were made could not possibly be said to have provided a probable cause basis for the issuance of the search warrant for petitioner's home. As to these elaborate calculations, it seems clear enough the government

already had a sufficiently full and complete compliment of all the financial records referred to in this section of the affidavit. All this clearly made any search for *further evidence* of these alleged crimes unnecessary and pretextual.

The upshot of the point made above seems especially clear and apt. This is particularly so since it is at once apparent the allegations about drug activity were cleverly crafted in a not so subtle attempt to make it appear the search warrant was issued in a drug investigation. Our beliefs in this regard are accentuated by the fact that other than the IRS agent's hollow pontifications about his training and expertise, there is nothing alleged in the affidavit which provides a meaningful basis for any belief that in August, 1998 (or any other time), Jantz Clinkscale was a "drug dealer". And, just as clearly, there is nothing alleged that actually shows any of the items of personal or real property sought by the warrant, or seized, were purchased with drug proceeds or that proof this was so could be found in a search of petitioner's home. Surely probable cause must be made of sterner stuff than was submitted here.

A fair distillation then of the affidavit's averments shows, with reference to the plethora of hearsay recited in the affidavit, that a serious cloud is cast over whatever contributions these alleged sources made to establish a probable cause basis for the issuance of this warrant. This is particularly so since there is not even a slight indication that any of the asserted sources were reliable or credible. Because this is so, we take the position that this was the type of situation the Court that issued this warrant should have been sensitive to.

Indeed, the lack of any allegations in the affidavit that even tended to indicate a protracted or continuous activity,

of the type attributed to petitioner by the three sources referred to, is most significant. Then there is the lack of any information that even suggested the affiant had any fresh information that tended to show Jantz Clinkscale had any recent involvement in drugs – if he ever did.

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

One thing that is most clear here is that the central thrust of the search warrant affidavit was based on contentions that related to asserted drug activity. Simply put, it could not be any clearer the investigation of any of the financial charges (including those petitioner was later charged with committing) did not require, or justify, a search of Jantz Clinkscale's home for evidence of any of the listed crimes. This is especially so since there was no probable cause basis to believe any item capable of being "particularized" would be on petitioner's home premises.

Simply put, the authorization given by this Court for the use of hearsay in the probable cause equation does not represent a determination that such evidence is always appropriate. And, just as surely this authorization did not relieve the Court that issued this warrant of his duty to require some first-hand facts where, as here, the tendered hearsay evidence does not rise to the required level of reliability. Indeed, one court has gone on record in holding:

> "The fact that an officer is experienced does not require a Court to accept all of his suspicions as reasonable, nor does mere experience mean that an agent's perceptions are justified by objective facts."

United States v. Buenaventura-Ariza, 615 F.2d 29, 36 (2d Cir. 1980).

Now we readily concede there may be certain specialized areas where courts may lack an agent's knowledge. Indeed, it follows that where (unlike the situation here) the confluence of certain factors may not be indicative of very real possibilities to the untrained eye, the opinions of an agent *may* be worthy of being reckoned with. But this is hardly one of those situations, for here the beliefs expressed by the affiant that drug dealers are likely to have evidence of their drug dealings in their home is a belief that is literally generic. This is especially so when it relates to transactions of recent vintage. Here the *latest* of the stale transactions that were talked about in the affidavit (said to have related to Marvin Reese [**App. 90-91**]) occurred more than nine to ten months before the search. *See* **Sgro v. United States, 287 U.S. 206, 210-211 (1932)**. The point in this circumstance is that more was required to be stated in an affidavit than the agent's beliefs based on generic factual assertions of the type made in this case. Indeed, of all the averments recited with reference to the agent's experience and expertise, there was nothing said that would not have occurred to any perceptive person (whether a Judge, lawyer or lay-person).

With this being so, more than a quantum leap is required to overcome the affidavit's failure to set forth probable cause to even believe Jantz Clinkscale was guilty of the drug offenses *insinuated* in this affidavit. And, it required bridging certain other evidentiary gaps with pure speculation to support a belief that evidence of the other offenses could be located during the search. *See* **United States v. Spilotro, 800 F. 2d 959, 961 (9th Cir. 1986)** and **United States v. Cardwell, 680 F.2d 75, 78 (9th Cir. 1982)**.

What should not be overlooked here is that nothing specifically related to any drug transactions was sought by

the search warrant. Simply put, the Court was asked to place blind faith in the asserted conclusions and opinions of the affiant. On this point *see* **United States v. Schultz, 14 F.3d 1093 (6th Cir. 1994)**. Significant here, the Court wrote, in the language quoted below, as though it was writing for this case, that:

> While an officer's "*training and experience*" may be considered in determining probable cause, . . . it *cannot substitute for the lack of evidentiary nexus* in this case, prior to the search, between the . . . place to be searched and any criminal activity. . . .

(Id., pp. 1097-1098) (Emphasis supplied).

Here the point to be noted in this case, as was the situation in **Schultz**, is that what was submitted as the basis for the search of a particular site was nothing more than rote generalizations regarding the common habits of drug dealers. Simply put, what was submitted lacked any specific facts linking any drug activity (or any illegal activity) to the place to be searched.

ARGUMENT NO. I

WHERE THE SEARCH WARRANT AFFIDAVIT, ON THE BASIS OF WHICH A HOME WAS SEARCHED, NOT ONLY FAILED TO SET FORTH PROBABLE CAUSE SUFFICIENT TO LINK THE HOME TO ANY CRIMINAL ACTIVITY, BUT ALSO FAILED TO SET FORTH ANY BASIS FOR A BELIEF THAT EVIDENCE OF ANY SPECIFIC CRIME COULD BE LOCATED DURING A SEARCH OF THE PREMISES PARTICULARIZED, IT FAILS TO ARTICULATE A PROBABLE CAUSE BASIS FOR THE SEARCH.

The law could not be any clearer than it already is, there must be a probable cause basis to conduct a search of

private property and to this end any asserted belief that a search warrant should issue, on the basis of an officer's belief evidence of a crime will be produced, must be assayed in an objective manner.

A. Where The Affidavit Submitted In Support Of A Warrant To Search A Residence (1) Failed To Recite Sufficient Facts To Support A Finding Of Probable Cause To Believe The Petitioner Had At Various Times Engaged In Crimes Committed In Violation Of 21 U.S.C., §841 et al., And (2) Failed To Recite Sufficient Facts To Support A Belief That Evidence, Fruits, And The Like, Of The Various Specific Crimes Enumerated Therein Could Be Found In A Search Of His Home, The Issuance Of A Warrant In The Light Of These Failures Cannot Be Justified.

Here it is clear, the Court that issued the warrant could have improperly inferred the financial documents and records sought by the warrant (and listed as "property to be seized – Financial Records" in the Affidavit) were kept, or ordinarily and regularly maintained, by people suspected of being involved in illegal drug activity. To begin with, our position is that the warrant was defective because it was not specific as to any precise crime for which evidence could be sought. Additionally, the description of the items to be seized was undeniably over-broad.

Another point here being urged is that the warrant was "impermissibly general" in that it authorized the search for, and seizure of, evidence of any conceivable federal crime of a financial nature the petitioner could

possibly be connected to.[3] What was sought was evidence of laundering monetary instruments (**18 U.S.C., §1956**); engaging in illegal monetary transactions (**18 U.S.C., §1957**); tax violations (**Title 26 U.S.C., §7201**); fraud and false statements (**26 U.S.C., §7206**); reports on domestic coins and currency transactions (**31 U.S.C., §5313**); and structuring transactions to evade reporting requirements, **31 U.S.C., §5324**.

While it may very well be somewhat trite to recall (even in a case artificially colored as though it involved drug activity), the primary purpose underlying the particularity requirement of the Fourth Amendment was to avoid the individual being victimized by the evils associated with the general warrant, which authorizes "a general, exploratory rummaging in a person's belongings," **Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971)**.

What this holding and the concept it represents does is validate our contentions that the warrant in this case vested in the officers too much discretion as to what was to be seized and was not specific as to the predicate crime or crimes for which evidence was sought.

Here too it is submitted that based on any fair consideration of all the *asserted* facts recited in the warrant affidavit, the reasonable inferences therefrom should

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[3] Surely it must be clear that by listing the statutes for which evidence of violations was sought actually expanded, rather than limited, the scope of the search. This follows because each of the statutes criminalize a countless number of federal offenses. Indeed this precise point was well made by then Judge (now Justice) Kennedy when he wrote in an almost identical situation that the government simply did not have probable cause to believe the accused "had violated [all of] the statutes listed in the warrants" (**Spilotro, 800 F.2d, at 967**).

convince this Court that the Court that issued this warrant was improperly influenced by the designation in the affidavit of property which was brazenly asserted to be in some way "drug related". This follows because the affidavit did not fulfill the probable cause requirement that a specific crime ingredient was a necessary predicate for the issuance of this warrant. *See* **United States v. Watson, 423 U.S. 411, 417 (1976)** and **Warden v. Hayden, 387 U.S. 294, 307 (1967)**.

Given that probable cause to search is founded upon a logical *nexus* between the ingredients of time, crime, objects and place, the absence of a drug crime basis for searching this home for anything related to drugs could not be any clearer. Also, the lack of a *nexus* between the *generically* described objects sought and the petitioner's home is likewise significant here. Simply put, the affidavit here does not set forth a factual basis for believing that there were any documents, or things of evidentiary worth, that could have slightly supplemented the elaborate references to documents the affidavit showed were already in the government's possession. The reference here is to those documents and the like that were included in the affidavit under the reference "Financial Evidence Detailed". (**App. 92, et al.**)

B. Where A Warrant's Description Of The Items To Be Seized From A Residence Includes Such Generic Designations As "U.S. Currency," Jewelry, And The Like, It Does Not Comply With The Constitution's Particularity Requirement.

An analysis of our particularity argument is further facilitated by first recognizing that while the affidavit designated the "property to be seized" as being drug related, it did not specify in the list of enumerated crimes

for which evidence related to their occurrence was sought, any violations of Title 21 U.S.C. Indeed, the crimes for which evidence was sought specifically related to asserted violations of "Title 18 U.S.C., Sections 1956 and 1957, Title 26 U.S.C., Sections 7201 and 7206(1), and Title 31 Section 5313 and 5324".

Having said that, it is at once clear why the particularity issue in this case is significant. To that end, an analysis of the affidavit and warrant shows two significant categories of items were sought. In category *one* we have items of personal property that were allegedly purchased with drug proceeds, *e.g.*, "jewelry, cars and other property". Also in this group was the "United States Currency".

In category *two* we have records, documents, financial and other papers. Here, of course, the law is clear. To be sure, some of us, including the Court, are mindful of the importance the Constitution attached to the command of the Fourth Amendment that search warrants must "particularly describ[e]" the objects sought in the search. Indeed in dealing with this requirement this Court wrote, more than seventy (70) years ago, that: "As to what is to be taken, *nothing is to be left to the discretion of the officer executing the warrant.*" **Marron v. United States, 275 U.S. 192, at 196 (1927)**. (Emphasis supplied.) As to the generic designation "United States Currency," as something to be seized, it could not be any clearer it cannot pass constitutional muster. This follows, first of all, for the most obvious of reasons. Simply put, this authorization clearly was based on the inferential reasoning (by the affiant and ultimately the Court) that any and all currency found on the premises targeted to be searched was fruit or evidence of one or the other of the various predicate crimes specified in the affidavit and warrant.

As we see it, quite possibly the Court even failed to realize that although it was alleged (in paragraph 1, of the "Property To Be Seized" section) that there were various items "relating to the transportation, ordering, purchasing, processing and distribution of . . . cocaine," the reference made to "United States Currency, precious metals and gems, gold coins, [and] jewelry" did not even make the claim these items were proceeds of any drug offense. *See* **21 U.S.C., §881.**[4]

Also, it may very well be that the lack of detail in the affidavit (in which *no Title 21 U.S.C. offense* was relied on as a basis for the warrant) nonetheless had an intended synergistic effect on the Court that issued the warrant. The result of this lulled the Court into mistakenly *concluding*, without a factual basis, that the central thrust of the warrant sought was to look for evidence of drug law violations. Given this very real possibility, it follows that such an impermissible conclusion could very well have fostered the inference that any United States currency and other valuables, although not specifically identified, were authorized by the warrant to be seized as fruit or evidence of drug violations. With this being so, the bottom line is that the description of United States currency and the other generically described personal items here referred to as seizeable on the basis of this warrant cannot pass

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[4] **21 U.S.C., §881(a)(6)**, allows forfeiture to the government in three circumstances: (1) money furnished or intended to be furnished in exchange for drugs; (2) money traceable to a drug transaction; and (3) money used to facilitate a drug transaction. With this being so, it follows that any seizure for purposes of forfeiture must be based on a probable cause showing that one or more of the above bases for forfeiture was present at the time seizure was to be made.

constitutional muster. *See* **Andresen v. Maryland, 427 U.S. 463 (1976).**

C. Where A Search Warrant Authorizes The Search For And Seizure Of Evidence And The Like That Could Arguably Be Related To A Litany Of Financial Crimes Assertedly Committed Prior To The Issuance Of The Warrant, It Follows The Seizure Of Items Not Listed In The Warrant By The Searching Officers (On Their Own Authority) Cannot Be Defended.

Of critical significance here is the fact that the affiant went on record in *disclaiming* that the funds seized from petitioner's home were drug proceeds, as that concept has come to be understood. *See* **21 U.S.C., §881(a)(6)**. Indeed, if it were otherwise, the affiant would never have been quoted as saying that:

> Based upon the Affiant's involvement in the investigation, and my law enforcement training and experience, it is the Affiant's belief that Jantz S. Clinkscale intended to use the seized $321,380.00 in U.S. currency to purchase cocaine.

Second *Gruver* Affidavit, at ¶5, quoted in Magistrate Thomas' "Order," dated March 23, 1999. This concession is significant because it shows clearly these funds were not seized because they were particularly described.

Now, the linchpin of the trial Court's opinion denying suppression, even after she recognized the fulcrum for her original opinion (**App. 3-16**) was shown by petitioner to be seriously flawed (**id., 128-132**), was that Ariel Castaneda had told the officers he made several deliveries of significant quantities of drugs to petitioner. In her revised holding the Court declared the deliveries were not made to

petitioner's home in Niles, Ohio (as the Court originally wrote [**id., 8-9**]), but to a home, said[5] [but not shown] to have been a "stash house" that was supposedly owned by petitioner, in Youngstown, Ohio. (*See* **id., 17**.)

Here it is worth repeating the Court in effect selected certain well chosen language in her subsequent Order to abandon and to trivialize a false finding that had been seriously relied on as a major premise in her deductive reasoning pattern. It was this syllogistic reasoning pattern that had resulted in the original Order denying the Motion to Suppress. Again, the Court wrote:

> The Record shall therefore reflect the fact that all drug deliveries [said to have been made by Castaneda many months after his arrest] were not made to Mr. Clinkscale's home in Niles, Ohio, but to his stash house in Youngstown.

(App. 17). This the Court wrote despite the fact that there was no evidence before her upon which she could rely in reaching these assailed conclusions.

As we see it, the Court's reliance on this latest resolution (quoted above) is even more problematic than was the Court's original determination. Both are fundamentally flawed. This is so because the entirety of Castaneda's arguably factitious revelations were obviously made to curry the favor of the agents. Indeed, Castaneda's information was only provided more than 4 months after he was arrested and only acted on by the government more

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[5] It is a critical point here that the only reference to a "stash house" appears in the affidavit as a statement attributed to an alleged source who offered his naked opinion that he understood petitioner owned a house somewhere near Youngstown State University that was dealt out of and used as a "stash house" (**App. 91**).

than 20 months after Castaneda's arrest (which had occurred in November, 1996). The rank conclusion these revelations actually proved Jantz Clinkscale was a "drug dealer" on the date his home was searched is, and was, truly farfetched.[6] Cf., **United States v. Caicedo, 85 F.3d 1184 (6th Cir. 1996); United States v. Lawson, 999 F.2d 985 (6th Cir. 1993); and United States v. Davidson, 936 F.2d 856 (6th Cir. 1991)**.

Here it seems clear from a reading of these cases that it is significant whether there was proof, *of recent vintage*, which sufficiently showed (as was shown in **Davidson**) a pattern of the accused's involvement in drug dealings (**id., pp. 859-860**).

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[6] While the affiant would extol the value of information supposedly supplied the government by Castaneda (in 1996), in which he referred to deliveries supposedly made to Clinkscale earlier in 1996, the affiant failed to mention in his affidavit that Castaneda had (8 days after he arrived) escaped from the institution in California he had prevailed upon the government to send him. This means the government knew he had been a fugitive for more than nine (9) months when they centralized his credibility (and the creditworthiness of the asserted facts contributed by him as stated) in the affidavit to search petitioner's home. (See **App. 104.**)

ARGUMENT NO. II

ASSUMING A SEARCH WARRANT AFFIDAVIT OTHERWISE SETS FORTH PROBABLE CAUSE, GIVEN THAT THE MOST ESSENTIAL AVERMENTS MADE THEREIN WERE STALE IN THAT THEY RELATED TO ALLEGED EVENTS THAT HAPPENED (IF THEY EVER DID) MORE THAN TWENTY MONTHS BEFORE THE WARRANT WAS ISSUED, IT FOLLOWS THAT NO PROBABLE CAUSE CAN BE SAID TO HAVE EXISTED, IF IT EVER DID, TO SEARCH THE PETITIONER'S HOME FOR ANYTHING.

In **United States v. Hill, 79 F.3d 1447 (6th Cir. 1996)**, the offense of conviction, based on a drug distribution charge, was said to have occurred in May, 1993. The District Court regarded as "relevant conduct" a previous drug offense that was said to have occurred nineteen (19) months before. In rejecting this thesis because of a lack of a *nexus* as between the previous drug offense and the offense of conviction, it was held in **Hill** that the lack of temporal proximity and regularity of conduct was so significant that its absence was dispositive.

By analogy then, it was unreasonable to a fault for the Court to draw the conclusion the warrant was properly issued in spite of the fact that there was no evidence that suggested, or that even tended to slightly suggest, our petitioner was involved (if he ever was) in any drug activity that occurred *after* Castaneda's December 10, 1996, arrest *and before* the search of petitioner's home made more than twenty (20) months later. Given that in **Hill** it was held that a transaction that occurred 19 months before the offense of conviction was committed was simply not a relevant factor in the sentencing calculations, the staleness argument made here becomes all the more

compelling. With this being so, it follows that credulity is taxed if events that happened more than twenty (20) months before (if they ever did) can be said to have supplied probable cause to search a home that was not even said to have been involved in any of the events relied on for the issuance of the search warrant.

Clearly then the staleness issue, as postured by the facts here, can only be validated (as we see it) if the determination is made (a) that the critical information was not stale, and (b) the court's reliance thereon was not arbitrary or unreasonable in the light of facts presented (and not presented) in the affidavit. In this latter regard it is worth repeating there was no information set forth in the affidavit from which it could be inferred that any drug dealing Jantz Clinkscale was involved in, if he ever was, was still going on or that there was any legitimate reason to believe the various and numerous items sought by the search would be on the premises when the warrant was executed.

Again, the law seems clearly to be that although probable cause may have existed once-upon-a-time, it does not follow that it will continue to exist indefinitely. Indeed, if nothing else, the passage of time (especially if there are no new facts that confirm the location of the array of evidence sought) would render the original information insufficient to establish probable cause at this later time.

In this case then, inasmuch as Ariel Castaneda (who was arrested on December 10, 1996) only told the agents months later the drugs he possessed were slated to be delivered to Jantz Clinkscale somewhere in Youngstown, Ohio, *and* given the fact that Castaneda became a fugitive, having escaped from prison almost nine (9) months *before* the affidavit was submitted in quest of this warrant (a fact not revealed to the issuing Magistrate), any conclusion his

accusatory statements were worthy of belief comes close to being insulting.

Here again the uncorroborated aspects of the facts asserted in the affidavit that must be reckoned with show: the failure to include in the affidavit the fact of Castaneda's fugitive status; and that the only information concerning any alleged criminal conduct (that came from Castaneda and two other alleged sources) related to past events. Add to this the fact that nothing that was said by any of these alleged sources was even verifiable. Also, it should be further noted none of these alleged sources in any way implicated, or even suggested, petitioner's home was involved in any illegal activity.

ARGUMENT NO. III

A SEARCH WARRANT THAT PURPORTS TO AUTHORIZE A GENERAL OR EXPLORATORY SEARCH FOR EVIDENCE OF POSSIBLE VIOLATIONS OF A NUMBER OF FEDERAL STATUTES, BASED SOLELY ON THE NAKED ASSERTION THAT "DRUG DEALERS" KEEP SUCH RECORDS AND DOCUMENTS (AS WERE SOUGHT BY THE WARRANT) IN THEIR HOMES CANNOT SURVIVE CONSTITUTIONAL SCRUTINY.

As we see it, and we certainly hope the Court sees it that way as well, to uphold the validity of the warrant in this case the Court would have to ignore the fact that the affidavit failed to set forth probable cause to believe that on petitioner's premises there could be found any evidence (not already in the government's possession) that would aid them in the prosecution of Jantz Clinkscale for any of the financial crimes identified in the warrant as the predicate basis for the search.

Assuming it to be a fact that the affidavit did set forth probable cause to believe Jantz Clinkscale had in the past been a "drug dealer" and that a variety of financial crimes had been committed by him, it still failed to set forth probable cause to believe the various and numerous categories of documents listed could be found in a search of his home. Yet, despite this irrepressible flaw the warrant on its face authorized the search for, and seizure of, evidence of any of the financial crimes so long as the evidence could arguably be related by the officers to the petitioner and his wife.

With this being so a matter of significance here (one worthy of note, hence should be reckoned with) is the argument made on this point to the Sixth Circuit. Here the government brazenly conceded that *"drug offenses were not subject violations"* denominated in the search warrant affidavit. **Brief of Appellee (filed in the Sixth Circuit Court of Appeals, at p. 20)**. (Emphasis supplied.) Yet it was likewise said, with equal gusto, that "drug evidence constituted important proof of Clinkscale's drug dealings as a likely source of income not reported on his tax returns" (**id., p. 21**). How these two statements that seem clearly to conflict can be reconciled surely will be addressed by counsel-opposite.

Clearly, the failure to match probable cause to any specific crime with the authorization to search for any generically described items, or documents, is alone a sufficient reason to invalidate the warrant. Also, one cannot lose sight of the fact that probable cause to believe a suspect has committed a particular crime is not, by itself, an adequate basis to obtain a warrant to search his home. Here, of course, we recognize the law to be that the affidavit must demonstrate probable cause to believe that the aptly described things, listed as objects of the search, are located in the particular place to be searched. As to

this we concede, both, that a Court in issuing a warrant may draw reasonable inferences about where identifiable evidence is likely to be kept, based on the nature and type of offenses. And, it is conceded that in the case of drug dealers it has been said that evidence is likely to be found where the dealers live. *See* **United States v. Pitts, 6 F.3d 1366, 1369 (9th Cir. 1993)**

But here, of course, our contention is that the affidavit even failed to set forth any basis for a belief that Jantz Clinkscale was a drug dealer on the date the warrant was obtained. It also failed to isolate any drug dealings (Title 21 U.S.C. offenses) as any offense for which evidence of its occurrence was to be searched for.

As was made clear by Judge (now Justice) Kennedy in **United States v. Spilotro, 800 F.2d 959 (9th Cir. 1986)**, in dealing with a warrant challenged, as this one was, as being overbroad, it is a significant flaw when:

> The only limit on the search and seizure was the requirement that the items seized be a violation of any one of the thirteen statutes, some of exceptional scope . . . [and, which] likely would encompass several hundred separate criminal acts, but no specific criminal transactions were set forth in the warrant.

(Id., p. 965). With the efficacy of this holding as a given, the fact that "no specific criminal transactions were set forth [in the warrant] in this case" must be regarded as compelling.

CONCLUSION

Because the search warrant here was based solely and wholly on inferences and insinuations that arose from information (most of which was "stale" and opinion based) supplied for the most part by people in custody who acted

in an effort to curry the favor of the federal agents, the information supplied by these people must be appropriately assayed and assessed. (**United States v. Czuprynski, 8 F.3d 1113, 1117 [6th Cir. 1993]**.) In so doing, one must reckon with the fact that there is a presumption of unreliability that attaches to statements provided by people who are in custody. **Lilly v. Virginia, 527 U.S. 116 (1999)**.

Here, of course, the Court should be mindful of what one authority stated:

> By definition, criminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from falsely accusing the innocent, from manufacturing evidence against those under suspicion of crime, and from lying under oath in the courtroom.

United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993).

Significant here, on the probable cause to search issue, was the incalculable weight given the contribution provided of the asserted information attributed to the three (3) alleged sources. What is important is that none of these people were said to have been reliable. And, two of them were under arrest and indictment when they supposedly supplied their historical information about our petitioner. Still the value of their asserted facts cannot be underestimated. This follows because absent these contributions there is no way this warrant would have been issued.

On the other hand, aspects of this information and other facts before the Courts seem clearly to have been ignored by those who crafted, approved and ratified the issuance of the warrant and the seizures made in this case.

This is most significant because the affiant's rote parroting, and the Courts' apparent gospelization of what the affiant says he was told is almost startling. This follows given the irreconcilable conflicts in the government's contentions directed against our staleness, and lack of probable cause arguments, it seems clear enough, despite the obvious flaws in the affidavit, this search was destined to be approved.

In this regard, it is worth repeating the government has argued "drug offenses were not subject violations" denominated in the search warrant affidavit (**Brief of Appellee, p. 20**). Yet we were also told in this same Appellate Brief, not only that "drug evidence" would be important proof bearing on possible income tax charges (**id., p. 21**), but also that given "the alleged scale of Mr. Clinkscale's drug operation suggests it would have remained intact between the arrest of Castaneda [in November, 1996] and the August 1998 search" (**id., p. 28**). How these simple declarations can be reconciled is yet to be stated.

The other aspect of this pointed condemnation of the government's arguments, and the lower Court's succumbment to its thrust, shows more than mere obliviousness to the fact that the accusatory statements made by the alleged sources concerning their alleged past drug dealing with petitioner, was undeniably being supplied corrupt sources and were obviously made to curry the favor of government agents. Granted it is certainly true that "the Books are not filled [as they should be] with perjury indictments of government witnesses who have gone beyond the facts." On the other hand, it is also well known that:

> Criminals caught in our system understand they can mitigate their own problems with the law by becoming a witness against someone else.

United States v. Bernal-Obeso, 989 F.2d 331, 334 (9th Cir. 1993). Also *see* **Commonwealth of the North Mariana Islands v. Bowie, 243 F.3d 1109 (9th Cir. 2001)**.

The upshot of the point here made is that the prosecutor (and the lower courts as well) failed to appreciate the perils involved in relying on the word of rewarded criminals. These perils are all the more compelling when it is apparent their sole mission in providing information was to so ingratiate themselves with the government that they would receive a significant benefit in exchange for literally telling the officer what he wanted to hear.

Respectfully submitted,

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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 00-4096

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JANTZ CLINKSCALE, Defendant-Appellant.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO **MEMORANDUM OPINION** (Filed Feb. 27, 2002)

BEFORE: NORRIS and CLAY, Circuit Judges, and SARGUS, District Judge.*

PER CURIAM. Defendant, Jantz Clinkscale, entered pleas of guilty to five charged offenses in an agreement that permits him to appeal the district court's order denying his motion to suppress evidence seized from his house pursuant to a search warrant.

Having had the benefit of oral argument and having carefully considered the record on appeal, the briefs of the parties, and the applicable law, we are not persuaded that the district court erred in denying defendant's motion to suppress.

Because the reasoning which supports denial of defendant's motion has been articulated by the district court, the issuance of a detailed written opinion by this court would be duplicative and serve no useful purpose. Accordingly, the order of the district court denying the motion to suppress, as well as defendant's conviction and sentence, are affirmed upon the reasoning employed by that court in its Order denying defendant's motion to suppress entered on February 24, 2000 and its Order entered on July 7, 2000 that clarified that earlier order.

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* The Honorable Edmund A. Sargus, Jr., United States District Judge for the Southern District Ohio sitting by designation.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA Plaintiff -vs- JANTZ S. CLINKSCALE and SHEILA D. CLINK-SCALE Defendants	JUDGE LESLEY WELLS CASE NO. 4:99 CR 0368 ORDER DENYING MOTION TO SUPPRESS AND TO RETURN PROPERTY (Filed Feb. 24, 2000)

This case is before the Court on the motion of Defendants Jantz Clinkscale and Sheila Clinkscale to suppress evidence and to return "illegally seized" property[1] After being granted an extension of time in which to respond, the government filed its brief in opposition on 18 January 2000. A reply was filed on 22 February 2000.

For the following reasons, the defendants' motion to suppress and to return property is denied.

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[1] Mr. Clinkscale and Mrs. Clinkscale were originally represented jointly by James R. Willis, Esq. At a 9 December 1999 hearing, however, the parties agreed Mrs. Clinkscale should have separate counsel, and Wesley Dumas, Esq. was appointed as her attorney. On 7 February 2000, Mr. Dumas filed a motion to join Mrs. Clinkscale in all defense motions previous [sic] filed. That motion was granted on 14 February 2000.

I. Factual Background

On 3 August 1998, United States Magistrate Judge James Thomas issued a search warrant for the Clinkscales' home in Niles, Ohio. The warrant authorized federal officers to search the house and "all outbuildings and vehicles on the curtilage" for evidence of "drug related" crimes and "any and all evidence" of violations of 18 U.S.C. § 1956 or § 1957, 26 U.S.C. §§ 7021 and 7206(1), and 31 U.S.C. §§ 5313 or 5324. (Defs' Mtn., Ex. A, at 2, 6.) The specific items to be seized were set forth in two lists, one entitled "Property To Be Seized – Drug Related" and one entitled "Property To Be Seized – Financial Records." (Defs' Mtn., Ex. A, at 3-4.)

The warrant was supported by a three-part affidavit signed by Gary L. Gruver of the Internal Revenue Service, Criminal Investigation Division. In Part One of the affidavit, Agent Gruver detailed the "Criminal Activity" leading him to believe Mr. Clinkscale was "currently operating a cocaine business." (Defs' Mtn., Ex. B, at 18.) Among other things, he stated that three separate individuals had, on three different occasions, implicated Mr. Clinkscale in a conspiracy to distribute cocaine. After his arrest in December 1997, Mr. Marvin Reese told agents of the Federal Bureau of Investigation he had begun "purchasing cocaine from CLINKSCALE in 1995 and had last purchased from him in November 1997." (Defs' Mtn., Ex. B, at 5-6.) An unnamed cooperating witness stated "that CLINKSCALE had been a cocaine dealer since at least 1990." (Defs' Mtn., Ex. B, at 6.) During a proffer session with federal agents, Mr. Ariel Martinez-Castaneda told police he had enlisted the help of, among others, Mr. Miguel Fierro-Lopez and Ms. Claudia Coronado-Chavez to deliver cocaine to Mr.

Clinkscale on 19 November 1996, 29 November 1996, and 10 December 1996. Mr. Castaneda also stated on four or five occasions he came to Youngstown to pick up $48,000 to $80,000 in cash from Mr. Clinkscale." (Defs' Mtn., Ex. B, at 4-5.)

Part Two of Agent Gruver's affidavit set forth the "Financial Evidence" supporting the request for a search warrant. Specifically, Agent Gruver stated that Clinkscales did not file tax returns for the years 1990-1993. They did file returns for the years 1994-1997, claiming ar income that ranged from $540.00 (in 1996) to $23,976.00 (in 1997). During those years, the Clinkscales allegedly used cash to make a number of significant purchases, including a Chevrolet Blazer in 1995, a Toyota Land Cruiser in 1996, an older-model Dodge 1500 Ram pick-up in 1997, and a Toyota 4 Runner in 1997. According to bank records, Mrs. Clinkscale made a $65,188.00 cash down payment on a house, and Mr. Clinkscale allegedly deposited "in excess of $800,000 to his and his wife's accounts at NCB during 1994 through 1997, the majority of which was in cash." (Defs' Mtn., Ex. B, at 7-16.)

In Part Three of his affidavit, Agent Gruver stated that based on the facts set forth in the affidavit and his training and experience, including participation in other financial investigations, "JANTZ S. CLINKSCALE is currently operating a cocaine business" and "is utilizing his residence . . . to store narcotics and conduct narcotics transactions." (Defs' Mtn., Ex. B, at 18.) He opined that "[t]here is probable cause to believe that CLINKSCALE has engaged in money laundering, the structuring of currency transactions, and tax evasion." (Defs' Mtn., Ex. B, at 16-19.)

Federal agents searched the Clinkscales' house on 4 August 1998. They seized approximately $321,380.00 in United States currency, financial records, miscellaneous jewelry, a 1998 Land Rover Range Rover, and a 1996 Toyota Land Cruiser. They also found marijuana in three different places in the house, a bulletproof vest, and a total of seven firearms. (Tr. of 10/27/99 Hring at 17-18.) According to the government, 56.9 grams of marijuana was discovered in the Land Cruiser, 49.9 grams in the Land Rover, and another 235.5 grams in the attic crawl space over the garage along with one of the weapons. (Br. in Opp'n at 14.) After obtaining a second search warrant, the agents also searched the Clinkscales' investment account at Smith Barney. (Defs' Mtn. at 7.)

The Clinkscales now seek to suppress the results of both searches and to have returned to them "all illegally acquired property including, but not limited to, all funds seized in this case and the defendants' personal property and papers." (Defs' Mtn. at 1.)

II. Motion to Suppress

The Clinkscales seek to suppress the results of the 4 August 1988 search on three different grounds: (1) the affidavit failed to set forth probable cause to believe Jantz Clinkscale was a drug dealer; (2) the information in the affidavit was stale; and (3) the warrant failed to specify with particularity the precise crime for which evidence could be sought. For the following reasons, the motion is denied.

A. Probable Cause

"Probable cause to search: has been defined as a "fair probability" that contraband or other evidence of a crime will be found in the place cited. *See United States v. Caicedo*, 85 F.3d 1184, 1192 (6th Cir. 1996) (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). The issuing judge or magistrate "may give considerable weight to the conclusion of experienced law enforcement officers regarding where evidence of a crime is likely to be found and is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense." *Id.* (internal quotes and citations omitted). The determination by the issuing judicial officer is entitled to "great deference" by the reviewing court and should be scrutinized in a "realistic and common sense" manner. *Id.* (citing *United States v. Algie*, 721 F.2d 1039, 1041 (6th Cir. 1983)).

The Clinkscales maintain the affidavit underlying the search warrant did not establish probable cause to believe Mr. Clinkscale was involved with drugs or that any of the items to be seized could be found in their house. (Defs' Mtn. at 2.) Specifically, they argue the magistrate judge erred in relying "on [Agent Gruver's] alleged training, experience, and the like, which at best were scant and conclusory and otherwise insufficient." (Defs' Mtn. at 3.) They contend further that Agent Gruver relied on hearsay, failed both to corroborate the witnesses' testimony and to connect Mr. Clinkscale definitively to Mr. Castaneda, and failed to "show[] there was ever any conversation about drugs that could be related to [the Clinkscales'] home." (Defs' Mtn. at 4-6.) Finally, they note that most of the witnesses were in custody, and, as a result, their "motives were to curry

the favor of the agents who actually solicited information from them regarding Jantz Clinkscale." (Defs' Mtn. at 3.)

These arguments are without merit. According to his affidavit, Agent Gruver has ten years of IRS-CID experience and has participated in numerous tax and controlled substance investigations. (Def's Mtn., Ex. B, at 2.) Magistrate Judge Thomas was thus justified in relying on Agent Gruver's expertise.[2] *See United States v. Caicedo*, 85 F.3d 1184 (6th Cir. 1996). Moreover, although the witnesses may have been motivated to lie, their information directly implicated Mr. Clinkscale and gave reasonable cause to believe evidence would be found at Mr. Clinkscale's house. Mr. Castaneda specifically identified Mr. Clinkscale as the intended buyer of the cocaine, had Mr. Clinkscale's address in his pocket,

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[2] At several points, the defendants' Motion to Suppress suggests Agent Gruver set out to deceive Magistrate Judge Thomas. For instance, the Motion states "that the affiant cleverly distorted the facts" (Mtn. at 4), spoke for "ulterior reasons" (Mtn. at 5) "crafted . . . gross insinuations" (Mtn. at 5), and made the "bold statement that he was 'familiar with the modus operandi of persons engaged in the illegal trafficking of controlled substances' " (Mtn. at 19).

If supported by evidence, such statements might lay the foundation for a *Franks* hearing. Under *Franks v. Delaware*, 438 U.S. 154 (1978), however, unsupported allegations of intentional misrepresentations do not require the Court to hold an evidentiary hearing. "There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof." *Id.* at 171; *see also Mays v. Dayton*, 134 F.3d 809, 815-16 (6th Cir. 1998). In this case, no evidence has been offered that Agent Gruver deliberately lied to or misled the magistrate judge.

and knew where Mr. Clinkscale's house was located and what it looked like. (Defs' Mtn., Ex. B, at 325.) Furthermore, he testified he had on two separate occasions delivered drugs to Mr. Clinkscale's home and was endeavoring to make a third delivery when he was arrested. (Defs' Mtn., Ex. B, at 4.) Mr. Reese knew where Mr. Clinksdale lived, the cars he drove, and his pager number. (Defs' Mtn., Ex. B, at 6.) Likewise the cooperating witness knew the precise location of Mr. Clinkscale's house, the improvements the Clinkscales had made to it, Mr. Clinkscale's car, and the kind of gun he carried.[3] (Def's Mtn., Ex., B, at 6.) In addition, federal agents corroborated key elements of these witnesses' testimony. Agent Krebs used hotel, phone company, and credit card records to confirm that Mr. Castaneda, Mr. Lopez, and Ms. Chavez (the two accomplices) were in Youngstown when Mr. Castaneda said they were and were staying at the hotels Mr. Castaneda identified. (Def's Mtn., Ex. B, at 5.) Agent Gruver determined that Mr. Reese's information about Mr. Clinkscale was accurate, and the cooperating witness's testimony meshed with that of both Mr. Castaneda and Mr. Reese. (Def's Mtn., Ex. B, at 6-7.)

With this information, Magistrate Judge Thomas had probable cause to issue a search warrant. Agent Gruver's experience together with the witnesses' testimony suggested a "fair probability that contraband or

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[3] Even if these witnesses had not identified Mr. Clinkscale's house as the place to which they delivered drugs, the government points out that Mr. Clinkscale "had no place of employment, no place of business, and used his home address extensively for bank accounts, and other financial records." (Br. in Opp'n at 10.) The agents therefore had li**le choice but to search Mr. Clinkscale's house.

evidence of a crime" would be found in Mr. Clinkscale's possession. *United States v. Leake*, 998 F.2d 1359, 1363 (6th cir. 1993).[4]

B. Staleness

A warrant must be invalidated if the information upon which it is based is "stale" and thus no longer gives rise to probable cause to believe the evidence will be found in a particular place. *See Sgro v. United States*, 287 U.S. 206 (1932) (invalidating a warrant after a magistrate judge changed the date on an expired warrant and re-issued it without re-considering probable cause). However, information does not automatically become stale once a given period of time has passed.

> The function of a staleness test in the search warrant context is not to create an arbitrary time limitation within which discovered facts must be presented to a magistrate. . . . Information which demonstrates a chain of related events covering a broad span of time continuing to the current period may furnish a most reliable indicia of present activity, thereby clearly demonstrating that probable cause exists for the order to intrude. . . . In general, the basic criterion as to the duration of probable cause is the inherent nature of the crime. . . . If an affidavit recites activity indicating protracted

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[4] The Clinkscales do not contend there was not probable cause to search for evidence of tax evasion or money laundering. (They contend only that the government had too much information. (Def's Mtn. at 18.)) Therefore, even if the government did not have probable cause to search for evidence of drug activity, the warrant would still be valid at least insofar as it authorized a search for criminal financial activity.

> or continuous conduct, time is of less significance.

United States v. Henson, 848 F.2d 1374 (6th Cir. 1987) (quoting *United States v. Haimowitz*, 706 F.2d 1549, 1554-55 (11th Cir. 1983)); *see also Andresen v. Maryland*, 427 U.S. 463, 478 n.9 (1976) (stating that questions of staleness depend not on an arbitrary time limit, but on the particular facts of the case).

In this case, the Clinkscales point to the fact that the search of their house took place nine to ten months after the events discussed in the affidavit, and they suggest the warrant should be invalidated on those grounds. (Defs' Mtn. at 20.) However, Magistrate Judge Thomas considered the time-lag when he issued the warrant and again during the 16 March 1999 hearing. In both cases, he concluded the agents had probable cause to search.[5] His determination is entitled to "great deference," *Caicedo*, 85 F.3d at 1192, and the record in this case suggests no grounds on which to overrule it. The alleged scale of Mr. Clinkscale's drug operation suggests it would have remained intact between the arrest of Mr. Castaneda and the August 1998 search. Moreover, the officers were searching for evidence of past tax fraud, the Magistrate Judge Thomas could reasonably have concluded the Clinkscales would not

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[5] In addition, the agents searched the Clinkscales' house the day after Magistrate Judge Thomas issued the warrant. Unlike the magistrate judge in *Sgro*, the information upon which Magistrate Judge Thomas made his decision did not change between the time he signed the warrant and the time the agents conducted the search. *Sgro*, 287 U.S. at 210-12.

have moved or destroyed their records prior to the date of the warrant.

C. Particularity

The Fourth Amendment requires a warrant to particularly describe both the place to be searched and the person or things to be seized. The description must be specific enough to enable the person conducting the search reasonably to identify the things authorized to be seized and must prevent "general, exploratory searches and indiscriminate rummaging through a person's belongings." *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986) (internal citations omitted).

The Clinkscales contend the warrant authorizing the search of their house does not survive scrutiny under the Fourth Amendment. More specifically, they argue the "warrant was 'impermissibly general'" and did not adequately tie the items to be seized with any alleged criminal offense. (Defs' Mtn. at 23.) Furthermore, they maintain it failed to describe with particularity the items to be seized insofar as it authorized the seizure of a number of generic items, such as "log books, records, payments receipts, . . . United States currency, . . . jewelry, and financial instruments, including stocks and bonds." (Defs' Mtn. at 26-28; Ex. A, at 3.) "Simply put," they conclude, "the warrant authorized the officers to seize every piece of paper and every document found on the premises." (Defs' Mtn. at 28.)

However, the specificity required in a warrant varies depending on the circumstances of the case and the type of items involved. If the officers cannot know at the time they apply for the warrant what precise records

and files would contain the relevant information, the warrant can cover broader categories of items. Likewise "warrants which describe generic categories of items are not necessarily invalid if a more precise description of the items subject to seizure is not possible." *Id.*; *see also United States v. Ables*, 167 F.3d 1021, 1033 (6th Cir. 1999) (stating warrant is valid once a category of seizable goods has been adequately described); *United States v. Henson*, 848 F.2d 1374, 1382-83 (6th Cir. 1988) (holding that "where the precise identity of goods cannot be ascertained at the time the warrant is issued, naming only the generic class of items will suffice"); *Spilotro*, 800 F.2d at 964 (stating a warrant containing even a generalized list of items to be seized will be held valid so long as the list refers the searching officers to a specific illegal activity).

In this case, the warrant described the items to be seized with as much particularity as the complicated nature of the alleged offenses made possible. As noted earlier, the warrant breaks down into two separate lists of items. In the first section, the officers were told to seize only evidence of "Drug Related" activity and, more specifically, evidence of "the transportation, ordering, . . . and distribution of controlled substances, in particular, cocaine, a Schedule II Narcotic Drug Controlled Substance." (Defs' Mtn., Ex. A, at 3.) Within this category, the officers could seize only log books relating to the sale of cocaine, evidence of domestic or foreign travel, financial information evidencing the concealment of money or other assets, the proceeds of drug sales, and evidence suggesting the identity of co-conspirators. (Defs' Mtn., Ex. A, at 3-4.) Although they could also seize generic items, such as United States currency and

jewelry, under the circumstances here a more specific description of such items is impossible. *See United States v. Sissler*, No. 91-2113, 1992 WL 126974 (6th Cir. June 10, 1992). In the second section, the officers were authorized to search only for financial records. They were further limited to a specific list of documents covering the period of 1 January 1994 to the date of the search, and to documents evidencing a limited number of possible crimes – namely, "violations of Title 18, United States Code, Sections 1956 or 1957; Title 26, United States Code, Sections 6050I, 7201, or 7206(1); or Title 31, United States Code, Sections 5313, 5324." (Defs' Mtn., Ex. A, at 4-6.); *see United States v. Cardwell*, 608 F.2d 75, 78 (9th Cir. 1982) (invalidating a warrant because "there [was] no limitation as to time and there [was] no description as to what specific records are to be seized").

As such, the warrant survives constitutional scrutiny. The warrant adequately describes a list of items which there was probable cause to seize, "and the Fourth Amendment is not violated because the officers executing the warrant . . . exercise[d] some minimal judgment as to whether a particular document [fell] within the described category." *United* [sic] *v. Riley*, 906 F.2d 841, 845 (2nd Cir. 1990); *see also Henson*, 848 F.2d at 1383; *Able*, 167 F.3d at 1033.

III. Motion to Return the Items Seized

Following the search of the Clinkscales' home, two of their vehicles – a 1998 Land Rover Range Rover and a 1996 Toyota Land Cruiser SUV – were seized pursuant to 21 U.S.C. § 881. (Defs' Mtn. to Dismiss Forfeiture,

Exs. C and D.) According to the defendants' motion, the seizure was illegal, and the vehicles should therefore be returned.

> [T]he vehicles seized from the defendants' home were not seized on the basis of the warrant, but were seized because of the presence of marijuana in these particular cars. The inescapable conclusion here is that any seizure for such purpose is (and was) illegal. This follows because the quantity of drugs seized herein only makes for a misdemeanor offense (21 U.S.C. § 844(a)). . . . [But] the forfeiture statute with which we are here concerned (21 U.S.C.§ 881(a)), only applies to drug offenses punishable by more than one year in prison. Thus the seizure for the reasons given cannot be validated.

(Defs' Mtn. at 7.)

However, the seizure was authorized on two grounds. First, Mr. Clinkscale has a prior felony conviction for cocaine distribution. Under 21 U.S.C. § 844(a), a person who possesses a controlled substance after a prior conviction under either state or federal law, may be sentenced to a maximum term of two years. 21 U.S.C. § 844(a). Even if Mr. Clinkscale did not have a prior conviction, the agents were still warranted in seizing the car. More than 300 grams of marijuana was seized from both the cars and the attic crawl space above them. In the crawl space, agents also found an AK 47 with two loaded magazines. The agents were thus permitted to conclude the vehicles were being used to transport marijuana, and to transport marijuana as part of a trafficking or distribution scheme. They were therefore entitled to conclude Mr. Clinkscale was in violation not

of 21 U.S.C. § 844(a), but of 21 U.S.C. § 841(a). Under the latter section, a person in possession of less than 50 kilograms of marijuana "may be sentenced to a term of imprisonment of not more than 5 years." 21 U.S.C. § 841(b)(1)(D).

Therefore, the motion to return the seized conveyances is denied.

IV. Conclusion

For the reasons set forth above, the defendants' Motion to Suppress and For the Return of Illegally Seized Property (Docket No. 38) is denied.

IT IS SO ORDERED

/s/ Lesley Wells
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA Plaintiff -vs- JANTZ S. CLINKSCALE Defendant	CASE NO. 4:99 CR 0368 JUDGE LESLEY WELLS ORDER REGARDING MOTION TO CLARIFY PREVIOUS ORDER (Filed July 7, 2000)

This case is before the Court on the government's 9 June 2000 motion to clarify a 24 February 2000 order denying defendant Jantz S. Clinkscale's motion to suppress evidence. Mr. Clinkscale replied on 22 June 2000. Construing the government's motion as a motion to reconsider an interlocutory order, the motion is granted.

On 3 August 1998, Agent Gary L. Gruver of the Internal Revenue Service, Criminal Investigation Division, filed an application for a search warrant of Mr. Clinkscale's home at 2934 Anderson Morris Road in Miles, Ohio. The application was supported by a three-part affidavit signed by Mr. Gruver in which he detailed the "Criminal Activity" leading him to believe Mr. Clinkscale was "currently operating a cocaine business," the financial evidence against Mr. Clinkscale, and his own training and expertise. (Def's Mtn., Ex. B [hereinafter "Gruver Aff."].) On the same day, United States Magistrate Judge James Thomas issued the search

warrant, authorizing federal officers to search the house and "all outbuildings and vehicles on the curtilage" for "any and all evidence" of violations of 18 U.S.C. § 1956 or § 1957, 26 U.S.C. §§ 7021 and 7206(1), and 31 U.S.C. §§ 5313 or 5324. (Def's Mtn., Ex. A [hereinafter "Search Warrant"] at 1-2, 6.) The specific items to be seized were set forth in two lists, one entitled "Property To Be Seized – Drug Related and one entitled "Property To Be Seized – Financial Records." Search Warrant at 3-6.) Federal officers searched the Mr. Clinkscale's home on 4 August 1998 and seized numerous items.

On 27 December 1999, Mr. Clinkscale filed a motion to suppress evidence found during the August 1998 search. Among other things, he contended there was no "nexus between the asserted drug deliveries to Youngstown, Ohio and this defendant and his home." (Reply to Mtn. to Clarify at 1.) This Court denied Mr. Clinkscale's motion on 24 February 2000. In doing so, this Court incorrectly stated a man named Ariel Martinez-Castaneda had "on two separate occasions delivered drugs to Mr. Clinkscale's home and was endeavoring to make a third delivery when he was arrested." (2/24/00 Order at 6, 7 n.3.) In fact, Mr. Castaneda had not delivered the drugs to Mr. Clinkscale's home, but had instead delivered them to another house in Youngstown, Ohio which he owned and used as a "stash house." (Grover Aff. at 6; Statler Test. at 15.) Mr. Castaneda was attempting to make a third delivery when he was arrested. (Grover Aff. at 3-5.)

The record shall therefore reflect the fact that all drug deliveries were made not to Mr. Clinkscale's home in Niles, Ohio, but to his stash house in Youngstown.

Upon consideration, this Court finds the corrected factual record does not alter its 24 February 2000 order and the motion to suppress should still be denied. As noted in that order, when Mr. Castaneda was arrested he "had a piece of paper which appeared to be the return address off an envelope which contained the name of Jantz S. Clinkscale, 2934 Anderson Morris Road, Niles, Ohio 44446-4332." (Gruver Aff. at 4.) Mr. Castaneda also had in his possession a cellular phone with seven numbers stored in it. One of those numbers was "a non-published number listed to Jantz Clinkscale at 2934 Anderson Morris Road, Niles, Ohio 44446." (Grover Aff. at 4.) Another number was the number of Mr. Clinkscale's pager. (Gruver Aff. at 4.) According to Agent Gruver, a second witness had purchased "at least 20 kilos of cocaine" from Mr. Clinkscale, knew Mr. Clinkscale lived in Niles, Ohio, and knew the kinds of cars he drove. (Grover Aff. at 6.) Agent Gruver further stated a third witness, who had likewise purchased cocaine from Mr. Clinkscale, knew the cars Mr. Clinkscale drove and knew that he "always" carried a Glock 45 automatic either on his person or in his car, that he had purchased his home for "approximately $90,000 and that he had added a swimming pool, sauna, jacuzzi, and a gymnasium." (Gruver Aff. at 6.)

In addition, the search warrant sought, among other things, business and financial records, records of long distance phone calls, United States currency, gems, and jewelry. (Search Warrant at 3-6.) All of these items would logically be found in a suspect's home. As the government has pointed out, moreover, Mr. Clinkscale "had no place of employment, no place of business, and used his home address extensively for bank accounts,

and other financial records" – the very items for which Agent Gruver was authorized to search. (Br. in Opp'n at 10.)

The above information set forth in Agent Gruver's application for a search warrant establishes the requisite nexus between the place to be searched and the items sought. Magistrate Judge Thomas thus had probable cause to issue the search warrant.

IT IS SO ORDERED.

/s/ Judge Lesley Wells
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JANTZ S. CLINKSCALE, and SHEILA D. CLINK-SCALE, Defendants	INDICTMENT (Filed Oct. 20, 1999) CR. NO. 4:99CR368 **JUDGE WELLS** Title 21, Section 46 and 844(a), United States Code; Title 18, Section 2 and 1957, United States Code; Title 26, section 7206(1), United States Code; Title 31, Section 5324(a)(3), United States Code; Title 18, Section 922(g)(1), United States Code

COUNT 1

The Grand Jury charges:

1. Beginning as early as January, 1993, and continuing through at least September 2, 1998, the exact dates unknown to the Grand Jury, in the Northern District of Ohio, Eastern Division, and elsewhere, the defendant JANTZ S. CLINKSCALE, and others known and unknown to the Grand Jury, did unlawfully, knowingly, and intentionally combine, conspire, and confederate and agree together and with each other, and with diverse others to

the Grand Jury known and unknown, to distribute a mixture or substance containing a detectable amount of cocaine and to possess cocaine with intent to distribute said substance, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(A).

2. In order to further the conspiracy, and to effect its objects, the defendant JANTZ S. CLINKSCALE, in the Northern District of Ohio, Eastern Division, and elsewhere, did commit and cause to be committed those acts specified in Counts 8-25 and 26-31 of this indictment.

All in violation of Title 21, United States Code, Section 846.

FORFEITURE

For the purpose of alleging forfeiture pursuant to Title 21, Section 853, United States Code, the allegations of Count 1 are incorporated herein by reference. As a result of the foregoing offense, defendant JANTZ S. CLINKSCALE shall forfeit to the United States any and all property constituting, or derived from, any proceeds he obtained, directly or indirectly, as the result of such violation; and, any and all of his property used or intended to be used, in any manner or part, to commit or to facilitate the commission of such violation; including, but not limited to:

1. $327,126.00 in U.S. Currency seized at 2934 Anderson-Morris Road, Niles, Ohio, on August 4, 1998.

2. $51,446.82 in U.S. Currency seized from Smith Barney, Inc., account #344-00521 on August 27, 1998.

3. Real Property located at 2934 Anderson-Morris Road, Niles, Ohio.

4. 1998 Land Rover Range Rover, VIN: SALPV1447WA379514, seized at 2934 Anderson-Morris Road, Niles, Ohio, on August 4, 1998.

5. 1996 Toyota Land Cruiser SUV, VIN: JT3HJ85J1T0134783, seized at 2934 Anderson-Morris Road, Niles, Ohio, on August 4, 1998.

6. Miscellaneous Jewelry valued at approximately $28,425.00 seized at 2934 Anderson-Morris Road, Niles, Ohio, on August 4, 1998; to wit:

a.) Platinum Band with one (1) Center Stone and six (6) Side Stones;

b.) Rolex Watch with Black Band;

c.) Rolex Watch Silvertone Expandable Band;

d.) Rolex Watch Silvertone Band (Men);

e.) Men's Goldtone Ring with 21 Small Stones;

f.) Goldtone Men's Ring with 24 Stones;

g.) 14kt Bracelet with 96 Small Stones;

h.) Gold Chain with South Africa Coin;

i.) Gold Ring with 20 Stones;

j.) Gold Rolex Watch;

k.) Gold Bracelet with Stones;

l.) Gold Bracelet;

m.) Gold Ring with Stones; and,

n.) Silver and Goldtone Necklace with Round Pendant.

Substitute Assets: In the event that any property subject to forfeiture under Title 21, United States Code, § 853, as a result of any act or omission of the defendant:

(1) cannot be located upon exercise of due diligence;

(2) has been transferred or sold to, or deposited with a third party;

(3) has been placed beyond the jurisdiction of this Court;

(4) has been substantially diminished in value; or,

(5) has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, § 853(p), to seek forfeiture of any other property of the defendant, up to an amount equivalent to the value of the property forfeitable under § 853(a).

COUNT 2

The Grand Jury further charges:

On or about August 4, 1998, in the Northern District of Ohio, Eastern Division, the defendants JANTZ S. CLINKSCALE and SHEILA D. CLINKSCALE did knowingly and intentionally possess approximately 17 ounces of marijuana, a Schedule I narcotic controlled substance.

All in violation of Title 21, United States Code, Section 844(a).

COUNT 3

The Grand Jury further charges:

On or about August 4, 1998, in the Northern District of Ohio, Eastern Division, the defendant JANTZ S. CLINKSCALE, having been convicted on or about May 27, 1988, in the Circuit Court of the Fourth Judicial Circuit of Florida, in and for the County of Duval, State of Florida, on the offense of sale, purchase and delivery of cocaine, a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting interstate and foreign commerce firearms, to wit, an SA 85mm semi automatic AK47, serial number SM13335; a Taurus .22 caliber handgun; a Beretta 9mm handgun; a Glock .45 caliber handgun; a Glock 9mm handgun; a .20 gauge pistol grip Mossberg shotgun; and a Ruger .45 caliber handgun.

All in violation of Title 18, United States Code, Section 922(g)(1).

COUNT 4

The Grand Jury further charges:

That on or about the 23rd day of March, 1995, in the Northern District of Ohio, Eastern Division, JANTZ S. CLINKSCALE and SHEILA D. CLINKSCALE, residents of Niles, Ohio, did willfully make and subscribe a U.S. Individual Income Tax return (Form 1040) for the calendar year 1994, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said Form 1040, they did not believe to be true and correct as to every material matter, in that the said document reported adjusted gross income (AGI) of $20,504.00, a tax liability

of $1,024.00 and claimed an earned income credit of $516.00, whereas, as they then and there well knew and believed, their correct AGI was approximately $106,787.00, their true tax liability was substantially higher, and they were not entitled to claim an earned income credit.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT 5

The Grand Jury further charges:

That on or about the 8th day of March, 1996, in the Northern District of Ohio, Eastern Division, JANTZ S. CLINKSCALE and SHEILA D. CLINKSCALE, residents of Niles, Ohio, did willfully make and subscribe a U.S. Individual Income Tax Return (Form 1040 PC Format) for the calendar year 1995, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said Form 1040, they did not believe to be true and correct as to every material matter, in that the said document reported adjusted gross income (AGI) of $17,112.00, a tax liability of $461.00 and claimed an earned income credit of $1,162.00, whereas, as they then and there well knew and believed, their correct AGI was approximately $125,340.00, their true tax liability was substantially higher, and they were not entitled to claim an earned income credit.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT 6

The Grand Jury further charges:

That on or about the 3rd day of April, 1997, in the Northern District of Ohio, Eastern Division, JANTZ S. CLINKSCALE and SHEILA D. CLINKSCALE, residents of Niles, Ohio, did willfully make and subscribe a U.S. Individual Income Tax Return (Form 1040) for the calendar year 1996, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said Form 1040, they did not believe to be true and correct as to every material matter, in that the said document reported adjusted gross income (AGI) of $540.00, reported no tax liability, and claimed an earned income credit of $1,190.00, whereas, as they then and there well knew and believed, their correct AGI was approximately $272,324.00, they had a substantial tax liability, and they were not entitled to claim an earned income credit.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT 7

The Grand Jury further charges:

That on or about the 10th day of April, 1998, in the Northern District of Ohio, Eastern Division, JANTZ S. CLINKSCALE and SHEILA D. CLINKSCALE, residents of Niles, Ohio, did willfully make and subscribe a U.S. Individual Income Tax Return (Form 1040 PC Format) for the calendar year 1997, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service,

which said Form 1040, they did not believe to be true and correct as to every material matter, in that the said document reported adjusted gross income (AGI) of $23,976.00, and a tax liability of $754.00, whereas, as they then and there well knew and believed, their correct AGI was approximately $373,117.00, and their true tax liability was substantially higher.

All in violation of Title 26, United States Code, Section 7206(1).

COUNTS 8-25

The Grand Jury further charges:

On or about the dates set forth below, in the Northern District of Ohio, Eastern Division, the defendants JANTZ S. CLINKSCALE, as named below in each of Counts 8 through 25, knowingly and willfully and for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and the regulations promulgated thereunder, structured, and assisted in structuring, and attempted to structure and assist in structuring, the following transactions with domestic financial institutions (National City Bank and Bank One), and did so as part of a pattern of illegal activity involving more than $100,000 in a 12-month period:

COUNT	DATE	DESCRIPTION OF TRANSACTION
8	Sept. 11-12, 1995	Deposit of $11,900 in currency into 2 accounts at National City Bank (NCB)

9	Feb. 15, 1996	Deposit of $12,000 in currency into one account of two branches of NCB
10	Mar. 28, 1996	Deposit of $24,500 in currency into one account at at least two branches of NCB
11	May 30-31, 1996	Deposit of $12,900 in currency into one account at NCB
12	July 15-16, 1996	Deposit of $12,100 in currency into one account of two branches of NCB
13	July 31, 1996	Deposit of $36,000 in currency into four accounts at at least three branches of NCB
14	Sept. 10, 1996	Deposit of $14,000 in currency into one account at two branches of NCB
15	Nov. 5-6, 1996	Deposit of $18,000 in currency into one account at NCB

16	Dec. 5-6, 1996	Deposit of $26,000 in currency into two accounts at two financial institutions (NCB and Bank One)
17	Jan. 8, 1997	Deposit of 413,000 in currency into accounts a NCB and Bank One
18	May 30, 1997	Deposit of $34,000 in currency into one account at four branches of Bank One
19	June 3, 1997	Deposit of $17,000 in currency into one account at two branches of Bank One
20	Aug. 7-8, 1997	Deposit of $21,000 in currency into one account at three branches of Bank One
21	Aug. 18-19, 1997	Deposit of $15,900 in currency into accounts at NCB and Bank One
22	Nov. 3, 1997	Deposit of $12,500 in currency into one account at two branches of NCB

23	Dec. 4, 1997	Deposit of $52,755 in currency into one account at at least five branches of Bank One
24	Dec. 15, 1997	Deposit of $25,000 in currency into one account at three branches of NCB
25	Dec. 22-23, 1997	Deposit of $12,000 in currency into two accounts at NCB and Bank One

All in violation of Title 31, United States Code, Sections 5324(a)(3) and 5322(b) and Title 31, Code of Federal Regulations, Section 103.11.

COUNTS 26-31

The Grand Jury further charges:

On or about the dates indicated below, in the Northern District of Ohio, Eastern Division, the indicated defendants did knowingly engage and attempt to engage in monetary transactions, affecting interstate or foreign commerce, in criminally derived property of a value greater than $10,000, as described below in each separate count, [sic] such property having been derived from specified unlawful activities, that is conspiracy to distribute, and possession with intent to distribute, and distribution of cocaine, a Schedule II narcotic controlled substance in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), and 846.

COUNT 26

DEFENDANTS	DATE	DESCRIPTION OF TRANSACTION
Jantz S. Clinkscale & Sheila D. Clinkscale	Oct. 25, 1994	Purchase of residence at 2934 Anderson Morris Road in Niles, Ohio, by transfer of Funds and monetary instruments including the proceeds of $30,000 mortgage from Home Savings & Loan; a $20,000 personal check from Helen and James Pack; 2 personal checks and a cashiers check from Roosevelt Clinkscale, and a $25,188.16 check drawn on defendant Sheila D. Clinkscale's account at Dollar Bank (nka National City Bank)

COUNT 27

Jantz S. Clinkscale	May 24, 1996	Purchase of 1996 Toyota Land Cruiser for $53,313.36; by transfer of trade-in vehicle, approximately $2,413.36 in cash, and $14,000 check drawn on Smith Barney investment account, and cashiers checks for $7,000 from Bank One and $11,000 from NCB

COUNT 28

Jantz S. Clinkscale	June 2, 1997	Deposit of $50,000 check drawn on "Jewels of the Plaza" account at Bank One to Smith Barney investment account

COUNT 29

Jantz S. Clinkscale	Aug. 7-8, 1997	Transfer of $19,500 check drawn on "Jewels of the Plaza" account at Bank One to Cole Brothers Dodge to purchase 1995 Dodge pickup truck

COUNT 30

Jantz S. Clinkscale & Sheila D. Clinkscale	Nov. 29, 1997-Dec. 16, 1997	Purchase of 1998 Toyota 4 Runner for $37,978.19; by transfer of checks for $6,391.73 and $8,871.71 drawn on Bank One, and another check for $23,000 drawn on NCB

COUNT 31

Jantz S. Clinkscale	Dec. 4-5, 1997	Purchase of 1998 Land Rover Range Rover for $64,654.78; by transfer of $4,654.78 VISA charge and a $60,000 check drawn on Bank One

All in violation of Title 18, United States Code, Sections 1957 and 2.

FORFEITURE: TITLE 18

A. For the purpose of alleging forfeiture pursuant to Title 18, § 982, United States Code, the allegations of Counts 26, 27, 28 and 31 are incorporated herein by reference. As a result of these offenses, defendants JANTZ S. CLINKSCALE and SHEILA D. CLINKSCALE shall forfeit to the United States any and all property, real or personal, involved in such offenses, and any and all property traceable to such property; including but not limited to:

1. $51,446.82 seized from Smith Barney, Inc., account #344-00521 on August 27, 1998.

2. Real Property located at 2934 Anderson-Morris Road, Niles, Ohio.

3. 1998 Land Rover Range Rover, VIN: SALPV1447WA379514, seized at 2934 Anderson-Morris Road, Niles, Ohio, on August 4, 1998.

4. 1996 Toyota Land Cruiser SUV, VIN: JT3HJ85J1T0134783, seized at 2934 Anderson-Morris Road, Niles, Ohio, on August 4, 1998.

B. By virtue of the involvement of the assets set forth above in violation of Title 18, § 1957, United States Code, any and all interest of the defendants in the above-described assets is forfeited to the United States pursuant to Title 18, § 982(a)(1), United States Code.

C. Substitute Assets: In the event that any property subject to forfeiture under Title 18, United States Code, § 982, as a result of any act or omission of the defendants:

1. cannot be located upon exercise of due diligence;
2. has been transferred or sold to, or deposited with a third party;
3. has been placed beyond the jurisdiction of this Court;
4. has been substantially diminished in value; or,
5. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 18, § 982(b)(1), United States Code, and Title 21, § 853(p), United States Code, to seek forfeiture of any other property of the defendants, up to an amount equivalent to the value of the property forfeitable under § 982(a).

A TRUE BILL

/s/ John C. Weynat
FOREPERSON

/s/ Emily M. Sweeney
EMILY M. SWEENEY
United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JANTZ CLINKSCALE, Defendant.	) CASE NO. 4:99CR368) JUDGE LESLIE BROOKS WELLS) **MOTION TO SUPPRESS AND FOR THE RETURN OF ILLEGALLY SEIZED PROPERTY**) (Filed Dec. 27, 1999)

The defendant, Jantz Clinkscale, hereby moves this court, under favor of **Rules 12(b)(3), 12(e), 41(e) and 41(f), Federal Rules of Criminal Procedure**, to suppress and exclude all evidence seized, or otherwise acquired herein, incident to the defendant's arrest, the seizure of his vehicles and the search made of the residence described as 2934 Anderson-Morris Road, Niles, Ohio. Also sought by this *Motion* is the forthwith return of all illegally acquired property including, but not limited to, all funds seized in this case and the defendant's personal property and papers.

In support of this *Motion*, the following averments are made:

1. That on August 3, 1998 a warrant was executed at the defendant's home (see **Appendix "A", infra, at pp. A-1, et. al.**). The affidavit (**Appendix "B", infra, pp. B-1, et. al.**) here referred to contained three (3) asserted bases as the required

predicate for a probable cause to search determination. These were set forth in the affidavit. The *first* of these was labeled "Criminal Activity Detailed," which, in turn, outlined in three (3) separately numbered paragraphs a collection of assertions that were designed to show that Jantz Clinkscale was a "drug dealer" at least as late as November, 1997. The *second* probable cause basis submitted was labeled "Financial Evidence Detailed". The *third* and final segment was said to be a reference to the "Affiant's Training and Expertise".

2. That he asserted detailing of financial evidence included references to a number of money transactions that had been engaged in by the Clinkscales between 1994 and 1996 and to their income tax returns for certain years.

3. That based on the contentions made under the above indicated labels, the affiant then foisted his opinion (which he said was augmented by that of unnamed "agents of the FBI and DEA," who were said to be experienced in this [sic] matters) on the Court that issued the warrant. It was affiant's feeble belief that evidence of the specifically enumerated financial crimes (not of *drug dealing*) could be found in a search of this home.

4. That the affidavit not only failed to set forth probable cause to believe the defendant, Jantz Clinkscale, was a "drug dealer," it also failed to set forth any basis for the required belief that any specific

item, or items, listed as things to be searched for and seized could be found on the premises.

5. That even assuming probable cause did in fact exist to search the home for "fruits" of the various financial crimes listed, or evidence of their commission, the warrant still must be deemed invalid. This follows because it was over-broad in the sense that it failed to particularize (as required by the Constitution) the items to be seized. Further, the affidavit failed to provide any basis for the officer to distinguish those documents and things that should be seized *from* those that should not be seized.

6. That the warrant as written authorized a general or exploratory search of the defendant's home premises.

7. That the officers seized items that did not even fall within the generic descriptions given of items to be seized; hence, must be deemed to have been confiscated by the officers on their own authority.

8. That the affidavit cleverly distorted and otherwise deliberately slanted various critical averments with an apparent intent to deceive the court, or manipulate the Court, into not realizing the extent to which the affiant had accepted on blind faith statements elicited from all of the sources referred to, all of which (save one) were in custody and whose motives were to curry the favor of the agents who actually solicited information from them regarding Jantz Clinkscale.

9. That given the affiant's purpose seemed clearly to be to avoid saying anything in his affidavit that would even slightly dissuade the court from issuing the warrant, it follows the failure of affiant to develop readily available facts that bore directly on certain critical assertions (made in the affidavit) must be viewed as making for a showing of deliberate, or reckless, disregard for the truth, with reference to various averments made in the affidavit. This is particularly so in light of the fact that the defendant, whose evidence is hereby proffered, *denies* each and every and all of the statements made by the alleged sources that accused him of having had drug deals, or even drug related conversations, with them.

10. That given the affiant intentionally and recklessly created various insinuations that he had to have known were false or unprovable, or worse yet, simply failed to seek verification for, his motives for so doing must be deemed to have been in the hope the Court would be finessed, or inveigled, into believing the affidavit set forth probable cause to search for and to do all of the things that were done to the premises searched.

11. That the various averments based on the affiant's alleged training, experience, and the like, which at best were scant and conclusory and otherwise insufficient to make the point that contraband and evidence of illegal activity would be found on the premises, where clearly insufficient. Further, the grim fact here is, the affidavit

vit failed to demonstrate Jantz Clinkscale was a drug dealer.

12. That nowhere in the affidavit did the affiant indicate anything that connected the defendant's home to any drug activity or even showed there was ever any conversations about drugs that could be related to this home.

13. That the affidavit cleverly distorted, and otherwise deliberately slanted, various critical averments made to artificially induce a belief (one not based on fact) that there was a basis for the affiant's opinion that "Jantz Clinkscale" was a "drug dealer". Reference here is being made to the following declaratory averments:

> A controlled delivery of the vehicle containing the cocaine was made to Ariel Martinez-Castaneda and Leobardo Soto-Santana on December 10, 1996, at the Microtel Inn, Youngstown, Ohio. Fierro-Lopez was equipped with a Kel Transmitter to assist in recording the transaction. Martinez-Castaneda entered the hotel room while Soto-Santana waited outside the Inn. Martinez-Castaneda made two telephone calls from his cellular phone and received one incoming telephone call on the cellular phone. The incoming call was to make arrangements to pick up a garage

door opener from someone to store the Volkswagen Golf.

* * *

When arrested Martinez-Castaneda had a cellular phone and a pager in his possession. . . . he also had a piece of paper which appeared to be the return address off an envelope which contained the name Jantz S. CLINKSCALE, 2934 Anderson Morris Road, Niles, Ohio 44446-4332. Special Agent George Krebs, of the Drug Enforcement Agency, obtained search warrants for the data stored in the memory of the cellular phone and pager.[1] The memory of the cellular phone contained seven numbers, two of which were in area code 330. The numbers were (330) 539-1819 and (330) 380-8030. S/A Krebs subpoenaed Ameritech records and learned that (330) 539-1819 is a non-published number listed to Jantz CLINKSCALE at 2934 Anderson Morris Road, Niles, Ohio 44446. The (330) 380-8030 pager number has been independently verified by your affiant to be the number of CLINKSCALE's pager.

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[1] Significant here nothing was said about anything having been learned from the search made of Castaneda's pager. This is hardly a fact that lacks any significance whatsoever.

Appendix "B", Affidavit at B-3 to B-4.

14. That despite certain bold assertions made in the above quote (which were doubtless submitted as being factual and verifiable) the proof will actually show the affiant, arguably for ulterior reasons, failed to reveal (indeed actually concealed) the fact that he lacked any personal knowledge and was indeed parroting double, or worse yet, even more remote hearsay, when he swore that:

> " . . . Castaneda made two telephone calls from his cellular phone and received one incoming telephone call on the cellular phone. . . . [And that] the incoming call was to make . . . [certain] arrangements"

See ¶13 above.

15. That as to the above averments, clearly they were crafted to show, by way of gross insinuations, and the like, that the defendant was the person to whom the drugs (*not 25 kilograms* as alleged in the affidavit, but *25 pounds*) that were intercepted while en route to being delivered to Ariel Castaneda in Youngstown and, according to the government, were to be turned over to.

16. That while the affiant made the point of stating that certain information he had been provided concerning "Clinkscale's residence, pager number and vehicles" had been "independently corroborated," *by him*, this fact magnifies the failure of the

affiant to reveal in the affidavit that he had actually sought (as he should have) to connect Clinkscale's residence and pager numbers to Castaneda's cellular telephone and pager and could not do so. This failure relates to the two calls said to have been made *on* Castaneda's cell phone (as alleged in the affidavit). Further, the affiant did not, by resort to the air-time records of the cellular phone, show if it was ever involved in connection with any of the phone numbers said to belong to the defendant. This is especially critical because of the insinuation in the affidavit that arises from the showing that two phone numbers, the residence number and a pager number said to be connected to Jantz Clinkscale, were discussed in a way that tended to relate them to the calls that involved Castaneda's cellular phone.

17. That with reference to the segment of the affidavit in which the affiant credits Marvin Reese as being a source of information in which he (Reese) denominates the defendant as the person who supplied him with approximately 20 kilograms over a period of months, including the month of November, 1997, a careful reading of the indictment that includes references to numerous monitored telephone conversations that were participated in by Marvin Reese and some of his fellow conspirators in the case that resulted in his becoming a lackey for the government, will show just how desperate Reese and his concubine, Linda Heard, and others were for drugs to sell and money to purchase drugs with

during that time and into December 1997. See **Appendix "C", *infra*, p. C-1 to C-19**. What one gains from a reading of this indictment belies totally the naked and unclad representations made by Marvin Reese that he was being routinely supplied with drugs during this period and that he had the wherewithal to purchase any serious quantity of drugs. Indeed, given the superceding indictment in his case, which included the information he arguably supplied the government, the absence of any references therein to the drugs the government says he (Reese) got from this defendant is hardly something that should have been omitted in our affidavit. This is especially so since clearly the government was unwilling to openly vouch for him as being a reliable person who had provided information that had been corroborated in any significant way.

18. That also significant here, with references to all of the alleged sources of the information relied on in an attempt to establish that Jantz Clinkscale was a "drug dealer," it is significant that there is nothing that even tends to corroborate the accusations of criminal activity made by Castaneda, Marvin Reese or anyone else. Further, there is nothing set forth in the affidavit that supplies a basis for crediting any of these alleged sources as being reliable or credible people. Nor is there any basis for a belief the information they supplied was creditworthy.

19. That the government has contended, indeed convinced the Magistrate, the vehicles

seized from the defendant's home were not seized on the basis of the warrant, but were seized because of the presence of marijuana in these particular cars. The inescapable conclusion here is that any seizure for such purpose is (and was) illegal. This follows because the quantity of drugs seized herein only makes for a misdemeanor offense (**21 U.S.C., §844[a]**). Given the affiant's penchant for extrolling his experiences and expertise, it follows he had to know the forfeiture statute with which we are here concerned (**21 U.S.C., §881[A]**), only applies to drug offenses punishable by more than one year in prison. Thus the seizure for the reasons given cannot be validated.

20. That all of the averments recited above apply full strength to the seizure of property from Smith-Barney. The seizure here referred to was made on the basis of the identical averments set forth in the warrant and affidavit relied on to search the defendant's home, which averments were supplemented by the facts learned in the wake of the earlier search. Thus they must be regarded as fruit of the "poisonous tree". On the other hand, even with the segment of the affidavit (which referred to the search of the home) included, it failed to set forth probable cause for any seizure from Smith-Barney.

WHEREFORE, in light of the foregoing, the defendant respectfully requests that this Court suppress all evidence improperly seized from him and order the *forthwith* return of the same to the defendant.

Respectfully submitted,

/s/ James R. Willis/BAB
JAMES R. WILLIS, ESQ.
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310 Lakeside Avenue, N.W.
Cleveland, Ohio 44113
(216) 523-1100
(216) 861-4161 (fax)
ATTORNEY FOR DEFENDANT JANTZ CLINKSCALE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion To Suppress And For The Return Of Illegally Seized Property* with attached *Brief In Support* was mailed to the office of James Moroney, Assistant United States Attorney, 1800 Bank One Building, 600 Superior Avenue, Cleveland, Ohio 44114-2600, this 24th day of December, 1999.

/s/ James R. Willis/BAB
JAMES R. WILLIS, ESQ.
Attorney for Defendant Jantz Clinkscale

BRIEF IN SUPPORT

I

The search of the defendant's home is here being challenged as having been unsupported by probable cause. Here it is clear from a mere reading of the **Affidavit** that the affiant (an IRS agent), and whoever assisted him in drafting this affidavit, truly must have struggled in an attempt to elevate into significance the nebulous, unclad admission of various asserted sources as to their own involvement in drug activity. Significant here, none of these alleged people were even credited with being reliable sources. Surely this is a factor worthy of heightened consideration. The fact that these references, insofar as they included Jantz Clinkscale, were about him personally, is most significant. This follows because probable cause to arrest must in all cases be distinguished from probable cause to search a particularly described place.

Now we are, of course, mindful of the fact that: for a probable cause to search determination to be meaningful there must invariably be a *nexus* between the alleged criminal activity, the things to be seized and the places to be searched. With this being so, the absence of an allegation that any of the alleged sources were credible, or reliable, is certainly something that cannot be ignored with impunity – at least not in our judgment. The same is true of the total absence of even an effort to connect the defendant's premises to any type of drug activity. Proof this is so is verified by the fact that *the warrant did not list any Title 21 offense, or offenses*, as being amongst the asserted crimes for which evidence was sought by the warrant issued to search this home.

This brings us then to that portion of the affidavit upon which the government must rely as providing the sole, and indeed the only, basis upon which the Court could have relied in issuing the warrant in this case. Here it was stated the warrant was issued so that the search could be made for "evidence of violations of **Title 18 U.S.C.**, Sections 1956 and 1957, **Title 26 U.S.C.**, Sections 7201 and 7206(a) and **Title 31 U.S.C.**, [Sections] 5313 and 5324". The evidence sought by the warrant, for which the Court inferentially determined there was "probable cause . . . to believe was now concealed" on the person or premises described, was set forth in what was denominated "Attachment B". This attachment in turn was made of part of, both, the warrant and the affidavit. The "attachment" itself generically described evidence of financial crimes of various sorts. Stated another way, no search was authorized for evidence of any Title 21 drug offenses. Rather, what was sought was any evidence or the like that could possibly be related to the specific financial crimes listed above.

Here too, it should be noted that counsel is of the belief, as the court eventually will be, that even if it can be said that there was probable cause to believe, when the warrant was issued, that Jantz Clinkscale was indeed guilty of any of the monetary offenses enumerated above (and that likewise is improbable), it would not then follow that there would also be probable cause to search Clinkscale's residence. Indeed, if it were otherwise there would be no reason to distinguish between an arrest warrant and a search warrant.

In any event, a fair distillation of the search warrant affidavit, related to the defendant's home, shows it is based on information supposedly supplied by alleged

sources as to various historical (*i.e., stale*) events. More specifically we are told (in ¶ 1 of the **Affidavit, Appendix "B", infra, pp. B-3 to B-5**) that on *December 9, 1996* two Hispanics stopped by the Missouri Highway Patrol were found to be in possession of approximately 25 kilograms of cocaine. Supposedly they told the officers, in a commplace-like effort to curry their favor, these drugs were being muled by them to Youngstown, Ohio to another Hispanic at the Microtel Inn. Next on *December 10, 1996*, "a controlled delivery was made of the vehicle in which drugs had been stored" to two other Hispanics. One of these was Ariel Martinez-Castaneda.

When this drug-laden vehicle was again stopped, this time somewhere in the Youngstown area, and Castaneda was arrested, it is being said that he "had a cellular phone and a pager . . . [along with a piece of paper] which contained the name Jantz S. Clinkscale, 2934 Anderson-Morris Road, Niles, Ohio 44445-4332." (**Ibid.**) Further, we are told in the affidavit that Jantz Clinkscale's home phone number was "in the memory[2] of . . . [the] cellular phone" found in Castaneda's possession. And Castaneda is credited with having made two calls from his cellular

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[2] When this number as assertedly placed in the cellular phone's memory, or how long this number had been in the cell phone's memory, we were not told. This raises the specter that it could have been in the cell phone's memory for years. Since all calls made into, or from, a cell phone can be identified on the basis of the air time consumed, the government's failure to connect Clinkscale's phone number on an air time basis to this cellular phone (for which there would have been a billing charge) this tells us that *other than* the presence of Clinkscale's phone number in Castaneda's cellular phone's memory and a piece of paper with Clinkscale's address on it, the government was at all times aware they lacked any hard evidence that Castaneda ever had any phone contact with Jantz Clinkscale.

phone. Another call, said to be an incoming call, which was not otherwise identified (*e.g.*, as to date, time, length of conversation and the like) was said, likewise without a factual basis, to have been made by some unnamed and unidentifiable person. Its purpose was, according to the affiant, "to make arrangements to pick up a garage door opener from someone to store" the car in which drugs were being delivered (**ibid**). Significant here, there is nothing in the affidavit that provides any insight as to how the affiant could possibly know any of these things.

Even this is not all. The **Affidavit** represented that more than five months later (after having been convinced it would be in his best interests *to sell* any ability he had to connect Jantz Clinkscale to drug activity, whether real or fabricated), Castaneda had a proffer session with agents of the government. Doubtless what was orchestrated by the parties to the deal involved the compromising of whatever charges had been, or potentially could be, lodged against Castaneda. As put by Castaneda, on *November 29, 1996*, he delivered drugs to Clinkscale. And, according to Castaneda, *December 10, 1996* was to the "next trip" he and Clinkscale would have been involved in (**ibid**). Simply put, again according to Castaneda, he was only involved (if he ever was, since we only have his word for it) in alleged deliveries of drugs to Clinkscale on *November 19, 1996*, and on *November 29, 1996*. Significant too, while Castaneda is also credited with having stated he picked up money from Clinkscale on "four to five occasions" in Youngstown and that he "flew from California into Cleveland, Ohio and took a taxi to Youngstown" for that purpose, it should be emphasized we only have his indisputably belated hearsay word that any of this happened.

As to the efficacy of the hearsay contributed by the Hispanics who were arrested in Missouri (and who became pawns for the agents in the effort made to follow the drugs said to be slated for delivery in Youngstown), it should suffice to simply note neither of these people even claimed to have had any personal contact with, or awareness of, Jantz Clinkscale. The same is true of the fact that Castaneda (the Hispanic to whom the drugs were to be delivered) is only credited with stating what must be regarded as, if true, *stale* uncorroborable facts. Also, it should be noted Castaneda is not even credited in the **Affidavit** with saying anything that involved the defendant's home. Obviously then, beyond the report of the isolated assertion that a phone number listed to Clinkscale appeared in, and was retrieved from, the memory[3] of Castaneda's cell phone, along with six other numbers recorded therein, there is no reference to the defendant's home. Again, as to when Clinkscale's number was entered in to the memory we were not told. Nor were we told this even occurred in 1996, the year in which Castaneda's arrest occurred.

Also significant here, the affiant, while extolling and emphasizing various revelations Castaneda made in his proffer concerning his asserted unconfirmable dealings with Jantz Clinkscale (who the affiant insinuated was the person to whom Castaneda intended to deliver the drugs seized in Missouri from the two mules) neglected to advise the Court that issued the warrant of a very significant fact. Our reference here is to the affiant's unexplainable

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[3] The reference to a number being stored in the memory of a cell phone does not tell us much, including whether it was stored in there years ago or more recently. It certainly does not tell us if that number was ever dialed.

failure to advise the Court, in the affidavit, that within months after having been rewarded by the government for having implicated Jantz Clinkscale in his proffer made to the government on April 24, 1997, Castaneda escaped from federal custody on December 23, 1997. This was less than eight (8) days after he reached the institution the government was prevailed upon to assign him as his place of incarceration (see **Appendix "D", infra, p. D-1**, letter from Warden to the sentencing Judge).

Surely this is something the Judge that issued the warrant more than eight (8) months later, *i.e.*, in August, 1998, should have been told about. This follows particularly since it can hardly be said that Castaneda's escape should be regarded as a non-factor insofar as the efficacy of the fact that the government seriously vouched for his credibility and his reliability in the Affidavit. Indeed, given that the Court was prevailed upon by the government and others to recommend that Castaneda be placed in an "intensive drug treatment program," in our judgment this was a fact that likewise was intentionally left out of the affidavit.

Next, the affidavit recites that one Marvin Reese, who likewise was in custody when interviewed, supposedly related what would be (if valid) more *stale* hearsay concerning his alleged dealings with Clinkscale. Reese (although this was not stated in the affidavit) had himself been arrested, and later indicted (on January 8, 1998) along with his girlfriend, one Linda Heard, and others in connection with conspiratorial purchases of drugs from one Elva L. Rodriquez and Ramon Rodriquez on a regular basis. This fact alone belies Reese's unclad statements, so brazenly realized on in the affidavit, that he had purchased at least 20 kilograms of cocaine from Clinkscale

between 1995 and November, 1997 (**ibid**). This is particularly so since Reese was regularly using a phone that was being fully monitored by the government during this period of time. And we know, as does the government, no references were made during Reese's conversations to Jantz Clinkscale. *See*, **United States v. Marvin Reese, et al., 4:98CR003[4] (N.D. Ohio, 1998)**. We also know this to be so because if it were otherwise, surely it would have been referenced, or at least mentioned, in the affidavit or Reese's superseding indictment. This indictment, which added new defendants to his original indictment, included revelations made by Reese during the proffer referred to in the affidavit. Also, it should be understood that no calls that related even slightly to Jantz Clinkscale appear in the elaborate affidavit used in the cited case involving Reese and those the government convicted as his co-conspirators, along with the New York suppliers he and Linda Heard had told on in an effort to curry favors from the government.

Still another person, said to be a "cooperating witness" and referred to as a "CW" (in ¶3, of the Affidavit), is credited with telling the agents that "Clinkscale has been [in his opinion] a cocaine dealer since 1990." This alleged person supposedly added (also an opinion since he obviously did not seem to have personal knowledge) that "Clinkscale buys kilos of cocaine, cuts it with a cutting

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[4] The superseding indictment here being referred to made specific reference to Marvin Reese in the following "overt acts," listed under the conspiracy count of the indictment referred to: Nos. 9, 10, 11, 13, 17, 19, 22, 27, 32, 39, 51, 61, 65 and 69. (See **Appendix "C", *infra*, p. C-1 et. al.**)

agent, which doubles the quantity and then sells the cocaine." (**Ibid.**)

Granted, this arguably phantom person did relate that he had purchased "one-fourth kilo of cocaine from Clinkscale once or twice a week during 1994" (**id., p. 3**). And additionally, this alleged person is credited with saying that around *November, 1997*, he observed "Clinkscale in possession of approximately two or three kilograms of cocaine" and in possession of "large sums of money," which he doubtless guessed came from cocaine sales (**ibid**). Significantly, however, he did not reveal where (in the Youngstown area) he saw the drugs or the money. And, most assuredly he did not say he had ever seen any of these items in the defendant's home. Also, while this alleged person stated one Kevin Hightower was used by Clinkscale to launder money, it was not expressed how this alleged person knew this to be a fact. And, just as surely, he was not shown to be clairvoyant.

Simply put then, with reference to the defendant's home, it could not be any clearer that other than the statement that Castaneda had Clinkscale's address on a piece of paper and had a cellular phone that supposedly had Clinkscale's home number stored in its memory, there is no other *asserted* connection made in the affidavit to any involvement in the drug dealings discussed in the section labeled "Criminal Activity Detailed". (*See* §§ **1, 2, and 3** of the **Affidavit, Appendix "B", *infra*, at pp. B-2 to B-6.**)

Given that the government claims to have actually searched the cellular phone's "memory," it follows one must unnecessarily wonder why the affiant did not provide the Court that issued the warrant with any of the

readily available additional information which related to relevant air-time use of this cellular phone.

Whatever the reason for his glaring failure, it is hardly something the government can, with impunity, continue to ignore. For if the failure to deal with these concerns is due to the fact that it took the government so many months to *purchase* from Castaneda the information he contributed and that by that time the cellular phone records were lost, then clearly that is something that should have been stated in the affidavit. If such is not the reason for the failure, then counsel should confess the affiant was at least negligent in an unforgivable way for failing to do so.

Significantly exposed here is the depth of the deliberate effort made by the affiant in finessing the Court into issuing these warrants, as well as the rather slipshod investigative techniques used. Consider in this regard the following inconfutable analysis of what occurred *after* the drug car had been given Castaneda in a controlled delivery made in the wake of the Missouri arrest of his people. Here the Court was told by the affiant:

> Martinez-Castaneda made two telephone calls from his cellular phone and received one incoming telephone call on the cellular phone. The incoming call was to make arrangements to pick up a garage door opener from someone to store the Volkswagon Golf.[5] Martinez-Castaneda and

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[5] How the affiant came to know these calls were made (if they were), we are not told. Nor was the Court that issued the warrant. Also, what is it about being a federal agent that empowered him to know both that there was an incoming call and what it was about? Worse yet,

(Continued on following page)

> Soto-Santana departed the Microtel Inn where the controlled delivery of the vehicle containing the cocaine was made [to them].

Affidavit, ¶1, Appendix "B", *infra*, at p. B-3.

Also, it seems clear that the government is actually conceding the "incoming call" referred to in the above quote did not come from any phone that could be connected to Jantz Clinkscale. For if it were otherwise, surely the effort to make this connection would have been made. Since this did not occur, the references to the cellular phone, to Clinkscale's home phone and pager numbers and the cell phone calls imputed to Castaneda can be likened to the role played by cannon fodder – otherwise it had no legitimate purpose that is discernible. On the other hand, *unless* we are to credit the affiant with simply being oblivious to certain realities, despite his professed expertise in these matters, then it must be understood that he knew precisely what he was doing when he crafted the affidavit and that he chose his words with care. And, the fact that the Court placed an invalid meaning on them is the Court's fault – not the fault of the affiant.

Another very specific charge made here is that Agent Gruver's affidavit not only shaded the truth, he misrepresented and distorted various specific references made in his affidavit. This is especially so when one considers the following segment of what can be viewed as a sort of preamble to the various allegations made in the affidavit. Here the Court was told:

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how do we know these assurances *did not* cause the Court to issue this warrant?

> I am familiar with the modus operandi of persons engaged in the illegal trafficking of controlled substances. *I have learned* that persons trafficking in controlled substances deal in large amounts of currency, profit from the sale, and attempt to legitimize those profits.

Appendix "B", at p. B-2. (Emphasis supplied.)

Next, what is labeled the "Probable Cause" basis for the issuance of the warrant is set forth. (**Id., pp. B-2 to B-7**.) This section is sub-divided into three (3) sections. The most critical is labeled "A. Criminal Activity Detailed". Under this section, which itself contains three (3) numbered divisions (*i.e., no. 1, 2 and 3*), the *asserted* factual references made in these divisions (as shown and contended elsewhere in this Brief, pp. 10 to 16), all set forth an assortment of nebulous details in an effort to validate the affiant's belief that Jantz Clinkscale was shown thereby to be a drug dealer.

Almost at once it should be understood that no Title 21 offenses were included in the offenses for which "evidence concerning" showing violations was sought to be made (see **Appendix "A", infra, p. A-1, et. al.**). Likewise clear is the fact that the warrant itself did not authorize a search for any evidence, and the like, in the hope it could be related to any Title 21 violations.

The upshot of this fact could not be any clearer. If the Court, either, *believed* the affidavit sought permission to search for proof of violations of Title 21 and that he authorized such a search, then clearly the Court was deceived – which is bad enough. But even more than that is present here. Even if Title 21 offenses had been listed, the affidavit here fails to set forth any probable cause basis for

a belief the government could establish that Jantz Clinkscale had engaged in any illegal drug activity.

II

Granted in the next segment of the affidavit, said to be a detailing of the relevant financial history of the defendant (**Affidavit, part II, Appendix "B," *infra*, at pp. B-7, et. al.**), it seems clear enough the calculations made therein (to which reference is made) could not possibly be said to have provided a probable cause basis for the issuance of the search warrant for the defendant's home. Indeed, as to these elaborate calculations (aside from the fact that clearly the government's ability to document the alleged transactions referred to did not make a case for searching the defendant's home), it seems clear enough that the government had a sufficiently full and complete compliment of records of all of the financial dealings referred to in this section of the affidavit. This includes income tax returns filed by the defendant. All this clearly made any search for further evidence of these alleged crimes unnecessary and pretextual.

The upshot of the point made above seems especially clear and apt. This is particularly so since it is at once apparent the allegations about drug activity were cleverly crafted in a not so subtle attempt to make it appear the search warrant was issued in a drug investigation. Our thought in this regard is accentuated by the fact that other than the IRS agents' hollow pontifications about his training and expertise regarding the types of things drug dealers can be expected to have in their homes, or routinely have in their homes, there is nothing alleged in the affidavit which provides a meaningful basis for any belief

that in August, 1998, Jantz Clinkscale was, or had ever been, a drug dealer. And, just as clearly, there is nothing alleged that actually shows any of the items of personal or real property sought by the warrant, or seized, were purchased with drug proceeds or that proof this was so could be found in a search of this home.

Here it should be understood, the search warrant for the defendant's home was founded entirely on a 19 page affidavit propounded by IRS agent Gruver. See **Appendix "B", *infra***. It included what was offered as background information under the designation "criminal activity detailed". These assertions were augmented by the agent/affiant's bold statement that he was "familiar with the modus operandi of persons engaged in the illegal trafficking of controlled substances." And, by the statement that he learned that "persons trafficking in controlled substances deal in large amounts of currency, profit from the sale, and attempt to legitimize those profits".

A fair distillation then of the affidavit's averments shows, with reference to the plethora of hearsay recited in the affidavit, that a serious cloud is cast over whatever contributions these alleged sources made toward the effort to establish probable cause to the satisfaction of the Court that issued this warrant. This is particularly so since there is not even a slight indication that any of the asserted sources were reliable or credible. Because this is so, we take the position that this was the type of situation the Court that issued this warrant (and this Court, in reviewing its issuance) should be most sensitive to. Simply put, the authorization given by the Supreme Court for Courts to use hearsay in the probable cause equation does not represent a determination that such evidence is always appropriate. And, just as surely this authorization did not

relieve the Court that issued this warrant of his duty to require more first-hand facts where, as here, the tendered hearsay evidence does not rise to the required level of reliability. Indeed, one court has gone on record in holding:

> "The fact that an officer is experienced does not require a Court to accept all of his suspicions as reasonable, nor does mere experience meant that an agent's perceptions are justified by objective facts."

United States v. Buenaventura-Ariza, 315 F.2d 29, 36 (2d Cir. 1980).

Now we readily concede there may be certain specialized areas where courts may lack an agent's knowledge. Indeed, it follows that where (unlike the situation here) the confluence of certain factors may not be indicative of very real possibilities to the untrained eye, the opinions of an agent *may* be worthy of being reckoned with. But this is hardly one of those situations, for here the beliefs expressed by the affiant that drug dealers are likely to have evidence of their drug dealings in their homes is a belief that is literally generic. This is especially so when it relates to transactions of recent vintage. Here the stale transactions that were talked about in the affidavit occurred more than nine to ten months before the search was to occur. See **Sgro v. United States, 287 U.S. 206. 210-211 (1932)**. The point here being that in this circumstance more was required to be stated in an affidavit than the agent's beliefs based on generic factual assertions of the types made in this case. Indeed, of all the averments recited with reference to the officers' experience and expertise, there was nothing said that would not have occurred to any perceptive person (whether a Judge, lawyer or lay-person).

With this being so, it seems clear enough any conclusion that evidence of crimes other than those directly related to drugs, requires an even greater quantum leap be taken. The leap here referred to required overcoming the failure to set forth probable cause to believe Jantz Clinkscale was guilty of the drug offense insinuated in this affidavit. And, it required bridging certain other evidentiary gaps with pure speculation to support a belief that evidence of the other offenses could be located during the search. See **United States v. Spilotro, 800 F.29 [sic] 959, 961 (9th Cir. 1986)** and **United States v. Cardwell, 680 F.2d 75, 78 (9th Cir. 1982)**.

Even this is not all. What may very well have been overlooked here is the affiant actually offered his own experiences (and the like) as support for the conclusion the issuing Court was asked to draw as to the habits and proclivities of drug dealers and how they handle the "proceeds" and implements of their drug endeavors. Obviously since nothing specifically related to any drug transactions was sought by the search warrant, the Court was being asked to place blind faith in the asserted conclusions and opinions of the affiant. And this the Court was asked to do although there was nothing said in the affidavit that could be said to have adequately informed the issuing Court, or a reviewing Court, of the nature and basis of affiant's inference, knowledge and experiences.

Indeed, absent such knowledge no Court can perform any meaningful review of what the affiant is representing, but which distills into his opinion. On this point see **United States v. Schultz, 14 F.3d 1093 (6th Cir. 1994)**. As we read **Schultz**, it stands for the proposition that generalizations about the asserted common habits of drug dealers (*i.e.*, that they keep records, documents and the

like, which evidence their drug dealings, along with cash, guns, drugs and the like in their residences) does not provide probable cause to search the residence of one suspected of being a drug dealer.

Here it should be noted that the affidavit in **Schultz** had, as put by the Court, alleged (in language comparable to that used here) that:

> Based on his training and experience, [he] believe[d] . . . that it is not uncommon for the records, etc. of such [drug] distribution to be maintained in bank safe deposit boxes.

Id., 1097. Significant here, the Sixth Circuit wrote, in the language quoted below, as though it was writing for this case, that:

> While an officer's "*training and experience*" may be considered in determining probable cause, *see, e.g. Texas v. Brown*, 460 U.S. 730, 742-43, 103 S.Ct. 1535, 1543, 75 L.Ed.2d 502 (1983); *U.S. v. Martin*, 920 F.2d 393, 399 (6th Cir. 1990), it *cannot substitute for the lack of evidentiary nexus* in this case, prior to the search, between the safe deposit boxes and any criminal activity. Officer Ideker did not have anything more than a guess that contraband or evidence of a crime would be found in the boxes, and therefore the first warrant should not have been issued. To find otherwise would be to invite general warrants authorizing searches of *any* property owned, rented, or otherwise used by a criminal suspect – just the type of broad warrant the Fourth Amendment was designed to foreclose.

Id., pp. 1097-1098 (Emphasis supplied).

Here the point to be noted in this case, as was the situation in **Schultz**, is that what was submitted as the basis for the search of a particular site was nothing more than rote generalizations regarding the common habits of drug dealers. And it involves a total lack of any specific facts linking any drug activity (or any illegal activity) to the place to be searched.

A

The Affidavit Submitted In Support Of The Warrant to search defendant's residence (1) failed to recite sufficient facts to support a finding of probable cause to believe that on or before August 3, 1998, the defendant had at various times engaged in crimes committed in violation of 21 U.S.C. §841 et. al. And (2) failed to recite sufficient facts to support a belief that evidence, fruits, and the like, of the various specific crimes enumerated in the affidavit *i.e.*, in the form of records, documents and the like, could be found in a search of the targeted home.

Here it is clear, the Court that issued the warrant improperly inferred the financial documents and records sought by the warrant (and listed as "property to be seized – Financial Records" in the Affidavit and Warrant) were kept, or ordinarily and regularly maintained, by people suspected of being involved in illegal drug activity. To begin with, our position is that the warrant was defective because it was not specific as to any precise crime for which evidence could be sought. Additionally, the description of the items to be seized was undeniably over-broad.

Another point here being urged is that the warrant was "impermissibly general" in that it authorized the search for, and seizure of, evidence of any conceivable federal crime of a financial nature the defendant could possibly be connected to.[7] As shown above, what was sought was evidence of laundering monetary instruments (**18 U.S.C., §1956**); engaging in monetary transactions in property derived from specified unlawful activity (**18 U.S.C., §1957**); attempting to evade or defeat tax (**Title 26 U.S.C., §7201**); fraud and false statements (**26 U.S.C., §7206**); reports on domestic coins and currency transactions (**31 U.S.C., §5313**); and structuring transactions to evade reporting requirements, **31 U.S.C., §5324**.

While it may very well be somewhat trite to recall (even in a case artificially colored as though it involved drug activity), the primary purpose underlying the particularity requirement of the Fourth Amendment was to avoid the individual being victimized by the evils associated with the general warrant, which purports to authorize "a general, exploratory rummaging in a person's belongings," **Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971)**.

What this holding and the concept it represents does is validate our contentions that the warrant in this case vested in the officers too much discretion as to what was to be seized and was not specific as to the predicate crime or crimes for which evidence was sought. This latter assailment is amplified by the fact that all of the alleged

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[7] Surely it must be clear that by listing the statutes for which evidence of violations was sought actually expanded, rather than limited, the scope of the search. This follows because each of the statutes criminalize a countless number of federal offenses.

financial crimes were fully documented in the affidavit; hence, it could not be clearer that to say there was a specific need for additional documents relative to those crimes is simply misrepresenting the facts.

Here too it is submitted that based on any fair consideration of all the *asserted* facts recited in the warrant affidavit, the reasonable inferences therefrom should convince any informed advocate that the Court that issued this warrant was improperly influenced by the inclusion in the affidavit, as "property to be seized," property which was brazenly asserted to be (without the required factual foundation) in some way "drug related". This follows because the affidavit did not fulfull the probable cause requirement insofar as a drug crime ingredient was a necessary predicate for the issuance of this warrant. As to this very specific, unassailable condemnation of the government's affidavit, we are convinced it is still the law that probable cause to search means, in the context (with which we are here concerned) such evidence as would persuade a person of reasonable caution to believe that a particular drug offense is being, or was being, committed. And futher, that evidence that would be of assistance in securing the apprehension, or conviction, of the perpetrator was located in the place to be searched. *See*, **United States v. Watson, 423 U.S. 411, 417 (1976); Warden v. Hayden, 387 U.S. 294, 307 (1967);** and **Beck v. Ohio, 379 U.S. 89, 91 (1964).**

Given that probable cause to search is founded upon a logical *nexus* between the ingredients of time, crime, objects and place, the absence of a drug crime basis for searching this home for anything related to drugs could not be any clearer. This follows all the moreso because no

effort was made to even try to describe any type of drug activity and assert such crime as a basis for the search.

Also, the lack of a *nexus* between the *generically* described objects sought, and the defendant's home is likewise significant here. Simply put, the affidavit here does not set forth a factual basis for believing that there were any documents, or things of evidentiary worth, that could have slightly supplemented the elaborate references to documents the affiant showed were already in the government's possession. The reference here is to those documents and the like that were included in Section II of the affidavit and referred to as "Financial Evidence Detailed".

The apparent conclusiveness of the showing made in the section of the Affidavit referred to above makes it clear the likelihood of finding other documents related to the transactions referred to was remote. This fact also exposes any belief there was a real need to search for additional evidence (of these alleged financial crimes) for what it was-- *i.e.*, pretextual. In any event, there was no allegation that the affiant, or anyone else, was aware of any direct evidence that any of the items sought in the warrant would be found in the defendant's home if it were searched when it was.

B

The Warrant's Description Of The Items To Be Seized From The Residence, Including The Generic Designations "U.S. Currency" And Jewelry, Did Not Comply With The Particularity Requirement Of The Fourth Amendment.

An analysis of our particularity argument is further facilitated by first recognizing that while the affidavit designated the "property to be seized" as being drug related, it did not specify in the list of enumerated crimes, for which evidence related to their occurrence was sought, any violations of Title 21 U.S.C.. Indeed, the crimes for which evidence was sought specifically related to asserted violations of "Title 18 U.S.C., Sections 1956 and 1957, Title 26 U.S.C., Sections 7201 and 7206(1), and Title 31 Section 5313 and 5324" (see **Search Warrant, Appendix "A," *infra*, pp. A-1, *et. al.***).

Having said that, it is at once clear why the particularity issue in this case is significant. To that end, an analysis of the affidavit and warrant shows two significant categories of items were sought. In category *one* we have what will be said are items of personal property that were purchased with drug proceeds, *e.g.*, "jewelry, cars and other property". Also in this group will be the "United States Currency".

In category *two* we have records, documents, financial and other papers and the like. Here, of course, the law is clear. To be sure, some of us, including the Court, are mindful of the importance the Constitution attached to the command of the Fourth Amendment that search warrants must "particularly describ[e]" the objects sought in the search. Indeed in dealing with this requirement the

Supreme Court wrote more than seventy (70) years ago that:

> The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, *nothing is to be left to the discretion of the officer executing the warrant.*

Marron v. United States, 275 U.S. 192, at 196 (1927). (Emphasis supplied.) Granted it can be quite possible that "the protection afforded by the specificity requirement is more apparent than real". Still the critical fact is the officers executing the warrant are not vested with any impermissible discretion "as to what is to be taken" (**id., at 196**).

As to the generic designation "United States Currency," as something to be seized, it could not be any clearer it cannot pass constitutional muster. This follows, first of all, for the most obvious of reasons. Simply put, this authorization clearly was based on the inferential reasoning (by the affiant and ultimately the Court) that any and all currency found on the premises targeted to be searched was fruit or evidence of the predicate crimes specified in the affidavit and warrant.

As we see it, quite possibly the Court even failed to realize that although it was alleged (in paragraph 1, of the "Property To Be Seized" section) that there were various items "relating to the transportation, ordering, purchasing, processing and distribution of ...cocaine," the reference made to "United States Currency, precious metals and gems, gold coins, [and] jewelry" did not even make the

claim these items were proceeds of any drug offense. See **21 U.S.C., §881.**[8]

Here, of course, it is undisputed that the affidavit failed to demonstrate, by a reference to any asserted facts, that Jantz Clinkscale could be proven to have engaged in any drug deals (recent or otherwise). This failure alone tells us the government lacked probable cause to have obtained a seizure warrant under the procedures that allow for drug forfeitures and seizures for that purpose. See **21 U.S.C., §881(a)**.

Also, it may very well be that the lack of detail in the affidavit (in which *no Title 21 U.S.C. offense* was relied on as a basis for the warrant) nonetheless had an intended synergistic effect on the Court that issued the warrant. The result of this lulled him into mistakenly *concluding*, without a factual basis, that the central thrust of the warrant sought was to look for evidence of drug law violations. Given this very real possibility, it follows that such an impermissible conclusion could very well have fostered the inference that any United States currency and other valuables, although not specifically identified, were authorized by the warrant to be seized as fruit or evidence of drug violations. With this being so, the bottom line then is that the description of United States currency and the other generically described personal items here referred to

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[8] **21 U.S.C., §881(a)(6)** allows forfeiture to the government in three circumstances: (1) money furnished or intended to be furnished in exchange for drugs; (2) money traceable to a drug transaction; and (3) money used to facilitate a drug transaction. With this being so, it follows that any seizure for purposes of forfeiture must be based on a probable cause showing that one or more of the above bases for forfeiture was present at the time seizure was to be made.

as seizable on the basis of this warrant, cannot pass constitutional muster. It is really that simple.

As to the designation of the items in category *two*, referred to above, which fall under the designation of "financial records," several points seem clear enough. First off, the nature of a search for what can be called private papers, documents and the like, is obviously far-reaching. Simply put, the warrant authorized the officers to seize every piece of paper and every document found on the premises. This authorization was given to the end that the officers would have the opportunity to determine its relation to the various offenses listed on the warrant as being the substantive crimes for which evidence was being sought.

Next, the Court's attention is directed to **Andresen v. Maryland, 427 U.S. 463 (1976)**. The point for which we cite **Andresen** is easily stated. There the Court, in addressing, and rejecting the defense contention that the warrant in that case was over-broad, construed away any constitutional harm from an obvious lack of particularity. This the Court did by reading the warrant in that case as only authorizing a search for those documents, and the like, which on their face related to the *enumerated* suspected criminal offense. As put by the Court, the warrants in the **Andresen** case "did not authorize the executing officers to conduct a search for evidence of other crimes". Simply put, the warrant in that case was not, for that reason, unconstitutionally general. **Id., 427 U.S. at 481-482**. In **Andresen** the Court reasoned the warrant only authorized a search for documents which on their face could be related to a specified crime (**ibid**). Obviously items were seized in our case which on their face could not

when seized (and cannot even now) be related to any specified crime.

C

Given That The Warrant Only Sought The Search For And Seizure Of Evidence, And The Like, That Could Be Related To The Enumerated (Financial) Crimes Allegedly Committed Prior To The Issuance Of The Warrant, It Follows The Seizure Of Items Not Listed In The Warrant By The Searching Officers (On Their Own Authority) Cannot Be Defended In Law, Logic Or Common Sense.

Of critical significance here is the fact that the affiant has already gone on record in *disclaiming* that the funds seized from defendant's home were drug proceeds, as that concept has come to be understood. See **21 U.S.C., §881(a)(6)**. Indeed, if it were otherwise, the affiant would never have been quoted as saying that:

> Based upon the Affiant's involvement in the investigation, and my law enforcement training and experience, it is the Affiant's belief that Jantz S. Clinkscale intended to use the seized $321,380.00 in U. S. currency to purchase cocaine.

Second Gruver Affidavit, at ¶5, quoted in Magistrate Thomas' "Order," dated March 23, 1999. See **Appendix "E", infra, p. E-4**.

Given the indisputable impact of the above quoted *judicial admission*, it is at once clear that the government is not even claiming the funds referred to above even fall within the generic descriptions of things for which they claimed to have probable cause to seize. Indeed, this

concession is even more comprehensive than that. This follows because the search warrant authorized the seizure of evidence in the form of records, documents and the like that could be related to crimes said to have been committed in the past.

This point is well made when it is understood that the tax crimes (**26 U.S.C., §7206[1]**), the money laundering charges (**18 U.S.C., §§1956 & 1957**) and the structuring charges (**31 U.S.C., §5324**), all relate to acts and events, which if they occurred, were completely consummated and vested in past years. Distilled, the allegedly false tax returns were said to have been filed for the years 1997, 1996, 1995 and 1994 (the last return having been filed in April, 1998). The structuring charges were based on acts committed during a 12 month period that included September, 1995, and the money laundering charges are dated for a period between October 25, 1994 and December 15, 1997. The search occurred in August, 1998.

Obviously then, if the search was properly related to those crimes which were identified in the search warrant as the offenses that framed the basis for the search, then clearly no probable cause existed to believe evidence of the particular crimes referred to was then and there on the premises.

CONCLUSION

As we see it, and we certainly hope the Court sees it that way as well, to uphold the validity of the warrant in this case the Court would have to ignore the fact that the affidavit failed to set forth probable cause to believe that on the defendant's premises there could be found evidence (not already in the government's possession) that would

aid them in the prosecution of Jantz Clinkscale for any of the crimes identified in the warrant as the predicate basis for the search.

Assuming it to be a fact that the affidavit does set forth probable cause to believe that a variety of financial crimes were committed by Jantz Clinkscale, it still fails to set forth probable cause to believe the various and numerous categories of documents listed could be found in a search of his home. Yet, despite this irrepressible flaw the warrant on its face authorized the search for, and seizure of, evidence of any of the financial crimes so long as the evidence could arguably by related by the officers to the persons identified in the warrant.

Clearly, the failure to match probable cause to any specific crime with the authorization to search for any particular items or documents is alone a sufficient reason to invalidate the warrant. Also, one cannot lose sight of the fact that probable cause to believe a suspect has committed a crime is not, by itself, an adequate basis to obtain a warrant to search his home. Here, of course, we recognize the law to be that the affidavit must demonstrate probable cause to believe that the things listed as objects of the search are located in the place to be searched. As to this we concede, both, that a Court in issuing a warrant may draw reasonable inferences about where identifiable evidence is likely to be kept, based on the nature and type of offenses, and that in the case of drug dealers it has been said that evidence is likely to be found where the dealers live. See **United States v. Pitts, 6 F.3d 1366, 1369 (9th Cir. 1993)**

But here, of course, the affidavit fails to set forth any basis for a belief that Jantz Clinkscale was a drug dealer.

It also failed to list any drug dealings (Title 21 U.S.C. offenses) as an offense for which evidence was to be searched for.

When a court issues a search warrant based soley and wholly on inferences and insinuations that arise from information (most of which is "stale" and opinion based) supplied for the most part by people in custody who acted in an effort to curry the favor of the federal agents, the information supplied by these people must be appropriately assayed and assessed.[9] This should, of course, be done in a way that reckons with the fact that there is a presumption of unreliability that attaches to statements provided by people who are in custody.

This presumption of unreliability is particularly compelling where "the statements are given under conditions that indicate the core concerns of the old ex parte practice--that is, where [as here] the government is involved in the statement's production, and when the statements described [also the case here] past events ..." **Lilly v. Virginia, 527 U.S. __, 119 S.Ct., 1887, 1900 (1999)**. Also see **United States v. Gomez, __ F.3d __ (10th Cir. 1999)**.

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[9] Here it is worth noting the Sixth Circuit has held that when dealing with uncorroborated allegations, which were not nearly as bad as those we have here:

> . . . a warrant application must reflect some basis for the magistrate to assess the informant's credibility or reliability. Absent some indication of the informant's veracity, we believe that a magistrate cannot find probable cause for issuing the warrant without abdicating his constitutional function."

United States v. Czuprynski, 8 F.3d 1113, 1117 (6th Cir. 1993).

The critical point in all this is that the inferences required to be drawn here are truly and undeniably suspect. This is especially so since they were soley, absolutely and undeniably dependent on elicited hearsay (most of it remote). Also, here we have a total lack of any basis--to say nothing of the required "substantial basis" for crediting any of this hearsay. Stated another way, the decision to issue the search warrant in this case was not based on any factual information that can be said to have had any indicia of reliability and was wholly uncorroborated--in addition to being stale.

Here, of course, the Court should be mindful of what one authority, whose experiences with informers and the like is perhaps unequaled by any federal Judge, has said. He wrote (while working as an Assistant Attorney General in the Criminal Division, Public Integrity Section, U.S. Department of Justice) as far back as 1984, that:

> Criminals are likely to say and do almost anything to get what they want, especially when what they want is to get out of trouble with the law . . . [T]his willingness to do anything includes not only truthfully spilling the beans on friends and relatives, but also lying, committing perjury, manufacturing evidence, soliciting others to corroborate their lies with more lies, and double-crossing anyone with whom they come into contact, including--and especially--the prosecutor. A drug addict can sell out his mother to get a deal; and burglars, robbers, murderers and thieves are not far behind. They are remarkably manipulative and skillfully devious. Many are outright conscienceless sociopaths to whom "truth" is a wholly meaningless concept. To some, conning people is a way of life. Others are just basically unstable people. A "reliable informant" one day

> may turn into a consummate prevaricator the next.

Stephen P. Trott, *The Successful Use Of Snitches, Informants, Coconspirators, and Accomplices as Witnesses for the Prosecution in a Criminal Case* (Jan. 1984). Assistant Attorney General Criminal Division, Public Integrity Section, United States Department of Justice.

Some years later this same author, after having ascended to the United States Court of Appeals, wrote what seems to some Courts very hard to believe. That is:

> By definition, criminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from falsely accusing the innocent, from manufacturing evidence against those under suspicion of crime, and from lying under oath in the courtroom.

United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993).

The point for which the above quote was made was to show the likelihood the affiant was hoodwinked by his sources, which is a possibility this Court surely should reckon with. On the other hand, it seems clear enough that the Court must critically assay the extensive contributions made by the asserted informants. These assertions were relied on most heavily by the affiant. As to these, there are those of us who recognize common sense would indicate that useful informants rarely come without a criminal history. And some of us likewise realize any quality assessment of their usefulness is oft-times dependent to a

degree on the depth of the officers' and the source's prior experiences.

Futher, it is always important to know whether the source was *working off his charges* "as is often the case and clearly appears to have been so with both Castaneda and Marvin Reese (both of whom were under indictment when they sold their "information" to the government).

Given that the affidavit did not even allege either of these sources had a past track record, such as tends to demonstrate reliability, and since Castaneda as found more than eight months after his arrest to be in need of intensive drug treatment (see **Appendix "F," p. F-1**), this need (whether real or feigned) surely played a role in his being assigned to the Institution from which he escaped within two (2) weeks after his arrival (see **Appendix "D," p. D-1**).

The Court will surely agree that these facts cast a dark shadow on the reliability of Castaneda and Marvin Reese as well. For Reese likewise was more probable than not a heavy drug user and had that consideration factored into his sentence.

While all this is bad enough, it is augmented by the fact that the Court that issued the warrants in this case was not told any of these negative things that should have been factored into the affidavit. If these inclusions had been referred to in the affidavit, who can say the Court would nonetheless have issued the warrants.

On this point the Court should consider **United States v. Medina-Reyes, 877 F.Supp. 468, 472 (S.D.**

Iowa, 1995). Also see **United States v. Brumel, 976 F.2d 1235 (9th Cir. 1992)**.

The upshot of all that has been argued above makes it clear the *Motion To Suppress* should be granted in all respects and the fruits of these illegal searches should be ordered returned.

Respectfully submitted,

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JANTZ CLINKSCALE

Appendix "A"

United States District Court

093 (Rev. 6/92) Search Warrant DISTRICT OF _____
NORTHERN JUDICIAL DISTRICT OF OHIO

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)
2934 Anderson Morris Road
Niles, Ohio 44446

SEARCH WARRANT
CASE NUMBER:
4:98M 6042

To: Gary L. Gruver and any Authorized Officer of the United States

Affidavit(s) having been made before me by
Gary L. Gruver who has reason to
Affiant

believe that [ ] on the person of or [x] on the premises known as (name, description and/or location)
2934 Anderson Morris Road
Niles, Ohio 44446, as more fully described in Attachment A

in the Northern District of Ohio there is now concealed certain person or property, namely (describe the person or property) as described in Attachment B and as more fully described in the affidavit in support of this warrant, both of which are hereby incorporated by reference as part of this warrant, all of which constitutes evidence of violations of Title 18, U.S.C., sections 1956 and 1957, Title 26, U.S.C., sections 7201 and 7206(1), and Title 31, U.S.C., sections 5313 and 5324.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before
8-13-98
Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime – 6:00 A.M. to 10:00 P.M.)

~~(at any time in the day or night as I find reasonable cause has been established)~~ [J Thomas]

and if the person or property be found there to seize same, heaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to as required by law.

/s/ James D. Thomas
U.S. Magistrate Judge

8-3-98 2:30 P.M.
Date and Time Issued

at Youngstown, Ohio
City and State

United States Magistrate Judge
Name and Title of Judicial Officer

/s/ James D. Thomas
Judicial Officer

[Amendment "A" Omitted In Printing]

Attachment "B"

ITEMS TO BE SEIZED

Property To Be Seized – Drug Related

1. Log books, records, payment receipts, notes, and/or customer lists, ledgers, notebooks, and other papers relating to the transportation, ordering, purchasing, processing, and distribution of controlled substances in particular, cocaine a Schedule II Narcotic Drug Controlled Substance.

2. Tickets, notices, vehicle rental receipts, credit card receipts, travel schedules, records of long-distance telephone calls, passports, and/or records and other items relating to domestic and foreign travel.

3. Books, records, receipts, bank statements and records, canceled checks, money drafts, letters of credit, money orders and cashier's checks, receipts, passbooks, and other items evidencing the obtaining, secreting, transfer, and/or concealment of money or other assets.

4. United States currency, precious metals and gems, gold coins, jewelry, and financial instruments, including stocks and bonds, deeds of trust, sales contracts, vehicle instruments, and art works.

5. Photographs and/or photograph albums, video cassette tapes, and audio cassette tapes of co-conspirators and assets.

6. Address and/or telephone books and other documents reflecting names, addresses, and/or telephone numbers of, or in any way identifying, the sources of any income.

Property To Be Seized – Financial Records

The following documents, books, ledgers, records, files, equipment, and any and all other correspondence for the period January 1, 1994, to the present:

1. General journals, cash receipts journals, cash disbursements journals, and sales journals.

2. General ledgers and subsidiary ledgers which include notes receivable, accounts payable, notes payable, closing ledgers, accounting workpapers, trial balances, adjusting entries, and closing entries.

3. Bank statements, deposit slips, withdrawal slips, and canceled checks for any and all bank accounts in the names of Jantz CLINKSCALE, Sheila Jones CLINKSCALE, The Jewels of the Plaza, Ledge Manufacturing, Inc., Ledge Records, Inc., C & C Holdings, Inc., Tower Cellular, Hightower Group, Inc. DBA Cellular Solutions, or any other names or nominees used by the CLINKSCALE's, including all funds and deposits such as certificates of deposit and money market accounts.

4. Records of income and expenditures for the years 1994 to the present.

5. All Federal tax returns or copies thereof (forms 1040, 1120, 1120S, 940, and 941), filed or not filed, and supporting workpapers, summary sheets, and analyses used in the preparation of the tax returns; and information returns or copies thereof (forms 1099, 1065, etc.) for the years 1994 to the present.

6. Deeds, auto titles, invoices, stock certificates, bond certificates, or any other records showing assets owned by the subject or expenditures made by the subject in his

name and/or nominee names for the period January 1, 1994, to the present.

7. Records or keys which relate to loans, mortgages, safe deposit boxes, or purchases of official checks or money orders from January 1, 1994, to the present.

8. Any and all instructions or programs stored in the form of electronic or magnetic media which are capable of being interpreted by a computer or related components. The items to be seized include operating systems, application software, utility programs, compilers, interpreters, and other programs or software used to communicate with computer hardware or peripherals either directly or indirectly via telephone lines, radio, or other means of transmission.

9. Any and all electronic devices which are capable of analyzing, creating, displaying, converting, or transmitting electronic or magnetic computer impulses or data. These devices include computers, computer components, computer peripherals, word processing equipment, modems, monitors, printers, plotters, encryption circuit boards, optical scanners, external hard drives, and other computer-related electronic devices. Such computer hardware and software is to be returned within 15 days of seizure.

10. Any and all information as delineated in paragraphs 1 through 9 and 11 and 12 in this attachment, and/or data stored in the form of magnetic or electronic coding on computer media or on media capable of being read by a computer or with the aid of computer related equipment. This media includes floppy diskettes, fixed

hard drives, removable hard disk cartridges, tapes, laser disks, video cassettes, and other media which are capable of storing magnetic coding.

11. Any and all written or printed material which provides instructions or examples concerning the operation of a computer system, computer software, and/or any relative devise.

12. Any and all other evidence that constitutes fruits and instrumentalities of violations of Title 18, United States Code, Sections 1956 or 1957; Title 26, United States Code, Sections 6050I, 7201, or 7206(1); or Title 31, United States Code, Sections 5313 or 5324.

United States District Court

NORTHERN JUDICIAL DISTRICT OF OHIO

In the Matter of the Search of (Name, address or brief description of person, property or premises to be searched) 2934 Anderson Morris Road Niles, Ohio 44446	APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT (Filed Aug. 3, 1998) CASE NUMBER: 4:98M 6042

I Gary L. Gruver being duly sworn depose and say:
Special Agent, Criminal Investigation Division

I am a(n) Internal Revenue Service, U.S. Treasury
Official Title
and have reason to believe

that [ ] on the person of or [X] on the property or premises known as (name, description and/or location) 2934 Anderson Morris Road, Niles, Ohio, as more fully described in Attachment A.

in the Judicial District of Northern Judicial District of Ohio there is now concealed certain property, namely See Attachment B.

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure) evidence

concerning violations of Titles 18; 26; 31 United States code, Section(s) 1956 and 1957; 7201 or 7206(1); 5313 and 5324

The facts to support a finding of Probable Cause are as follows:

Continued on the attached sheet and made a part hereof. [X] Yes [ ] No

/s/ Gary L. Gruver
Signature of Affiant

Sworn to before me, and subscribed in my presence
8-3-98 at Youngstown, Ohio
Date City and State

United States Magistrate Judge /s/ James D. Thomas
Name and Title of Judicial

NORTH JUDICIAL DISTRICT OF OHIO

(EASTERN DIVISION)

IN THE MATTER OF	§	
SEARCH WARRANT	§	MAGISTRATE NO.
FOR THE PREMISES OF	§	
JANTZ S. CLINKSCALE	§	
LOCATED AT	§	
2934 Anderson Morris Road	§	
Niles, Ohio 44446	§	

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

I, Gary L. Gruver, being duly sworn, depose and say:

I have been employed as a special agent of the Criminal Investigation Division (CID), Internal Revenue Service (IRS), United States Department of Treasury, since July, 1988. I am trained in financial investigative techniques and have participated in numerous investigations involving violations of Federal laws relating to income and other taxes cited in Title 26, United States Code (USC). I am familiar with the modus operandi of persons engaged in the illegal trafficking of controlled substances. I have learned that persons trafficking in controlled substances deal in large amounts of currency, profit from the sale, and attempt to legitimize those profits.

I. Probable Cause

A. Criminal Activity Detailed

Your affiant states that the facts which establish probable cause necessary for the issuance of a search warrant for the herein described premises are as follows:

1. On December 9, 1996, the Missouri State Highway Patrol stopped a Volkswagen Golf containing two Hispanics later identified as Miguel Angel Fierro-Lopez and Claudia Leticia Coronado-Chavez. A consent search of the vehicle resulted in the seizure of six packages weighing a total of approximately 25 pounds which field tested as positive for the presence of cocaine. Fierro-Lopez and Coronado-Chavez agreed to cooperate with law enforcement authorities and indicated that they were on their way to Youngstown, Ohio, to deliver the vehicle with the cocaine. They indicated that this was their third trip to Youngstown to deliver cars containing cocaine. Fierro-Lopez and Coronado-Chavez agreed to make a controlled delivery of the vehicle containing the 25 pounds of cocaine to Youngstown. A controlled delivery of the vehicle containing the cocaine was made to Ariel Martinez-Castaneda and Leobardo Soto-Santana on December 10, 1996, at the Microtel Inn, Youngstown, Ohio. Fierro-Lopez was equipped with a Kel Transmitter to assist in recording the transaction. Martinez-Castaneda entered the hotel room while Soto-Santana waited outside the Inn. Martinez-Castaneda made two telephone calls from his cellular phone and received one incoming telephone call on the cellular phone. The incoming call was to make arrangements to pick up a garage door opener from someone to store the Volkswagen Golf. Martinez-Castaneda and Soto-Santana departed the Microtel Inn where the controlled delivery of the vehicle containing the cocaine was made. The vehicle began counter surveillance driving which included quick turns and running a red light. Due to the counter surveillance driving the vehicle was stopped and Martinez-Castaneda and Soto-Santana were arrested. Martinez-Castaneda had a cellular phone and a pager in his possession when he was arrested. He also had a piece

of paper which appeared to be the return address off an envelope which contained the name Jantz S. CLINKSCALE, 2934 Anderson Morris Road, Niles, Ohio 44446-4332. Special Agent George Krebs, of the Drug Enforcement Agency, obtained search warrants for the data stored in the memory of the cellular phone and pager. The memory of the cellular phone contained seven numbers, two of which were in area code 330. The numbers were (330) 539-1819 and (330) 380-8030. S/A Krebs subpoenaed Ameritech records and learned that (330) 539-1819 is a non-published number listed to Jantz CLINKSCALE at 2934 Anderson Morris Road, Niles, Ohio 44446. The (330) 380-8030 pager number has been independently verified by your affiant to be the number of CLINKSCALEs pager. On April 24, 1997, Ariel Martinez-Castaneda provided information regarding his knowledge of cocaine trafficking in Ohio during a proffer session. Martinez-Castaneda stated that he coordinated the delivery of three vehicles containing cocaine to CLINKSCALE. The first trip was on November 19, 1996, when he met Fierro-Lopez and Coronodo-Chavez [sic] at the Microtel Inn in Youngstown after they had driven the car from Mexico. Martinez-Castaneda picked up the car and delivered it to CLINKSCALE to a house near a McDonald's Restaurant and a Taco Bell that was brown in color and had fake brick. Martinez-Castaneda stated that he would always hand the keys to the car to CLINKSCALE and that CLINKSCALE would take the car in back of the house to take the drugs out of the car. Sometimes he would go to the McDonalds or the Taco Bell to eat while CLINKSCALE removed the drugs. On November 29, 1996, Martinez-Castaneda met Fierro-Lopez and Coronodo-Chavez [sic] at the Microtel Inn in Youngstown and then delivered the vehicle containing cocaine to CLINKSCALE, and then spent the night at

the Microtel Inn. The next trip was on December 10, 1996, when they were arrested prior to making the delivery of the cocaine to CLINKSCALE. Records obtained by S/A Krebs from the Microtel Inn, Youngstown, Ohio, show that Fierro-Lopez stayed at the hotel on November 27 and 28, 1996, and that Martinez-Castaneda checked in to the hotel on November 28 and checked out on the 29th. Martinez-Castaneda stated that on four or five occasions he came to Youngstown to pick up money from CLINKSCALE. He flew from California into Cleveland, Ohio and then took a taxi to Youngstown. He would pick up six to eight packets of money containing $8,000 to $10,000 cash each. He would secure these packets on his person around his waist and then carry them on the airplane when he flew back to California. S/A Krebs subpoenaed records of the Holiday Inn, Girard, Ohio, and determined that Martinez-Castaneda stayed at the hotel on at least four occasions, on October 28, 1996, on November 19, 20, 1996, on November 28, 1996, and finally on December 10, 1996.

2. The Federal Bureau of Investigation was conducting an investigation into illegal drug trafficking in the Youngstown, Ohio area. This investigation included court authorized wire intercepts which provided evidence leading to the arrest of Marvin Reese for drug trafficking in December 1997. Marvin Reese was interviewed at the Mahoning County Justice Center regarding his knowledge of the illegal drug trade in the Youngstown, Ohio area on December 26, 1997. Reese stated that he has purchased at least 20 kilos of cocaine from CLINKSCALE. Reese began purchasing cocaine from CLINKSCALE in 1995 and had last purchased from him in November 1997. Reese stated that CLINKSCALE lives in Niles, Ohio, and has pager number 380-8030, and drives a blue Land Cruiser and a

green Ram truck. Information provided regarding CLINKSCALEs residence, pager number, and vehicles owned has been independently corroborated by your affiant.

3. A cooperating witness (CW) stated that CLINKSCALE has been a cocaine dealer since at least 1990. The CW stated that CLINKSCALE buys kilos of cocaine, cuts it with a cutting agent, which doubles the quantity, and then sells the cocaine. The CW stated that he had purchased one-fourth kilos of cocaine from CLINKSCALE one or twice a week during 1994. The CW stated that CLINKSCALEs house was purchased for approximately $90,000 and that he had added a swimming pool, sauna, Jacuzzi, and a gymnasium. CLINKSCALE owns a Toyota Land Cruiser, Land Rover, Pick Up truck, and an Acura. The CW stated that CLINKSCALE purchased the Land Rover in December 1997. The CW stated that CLINKSCALE owns a duplex on Arlington Avenue across from Youngstown State University and behind the Taco Bell which he deals out of and uses as a stash house. The CW stated that CLINKSCALE always carries a Glock 45 automatic. He keeps the gun in his car or on his hip. In approximately November 1997, the CW observed CLINKSCALE in possession of approximately two or three kilos of cocaine. The CW has also observed CLINKSCALE in possession of large sums of currency from the sales of cocaine. The CW stated that CLINKSCALE and Kevin Hightower graduated from Mooney High School. CLINKSCALE used Hightower to launder some of the proceeds of his cocaine business. The CW stated that CLINKSCALE did not work for Hightower or anyone else. The CW stated that CLINKSCALE was attending Youngstown State University and dealing drugs for a living.

II. Financial Evidence Detailed

1. A check of Internal Revenue Service records shows that:

a. JANTZ S. CLINKSCALE filed Federal income tax returns for the years 1994 through 1997. CLINKSCALE filed jointly with his wife Sheila for those years. CLINKSCALE listed his home address as 2934 Anderson Morris, Niles, Ohio, on his tax returns for the years 1994 through 1997. The following is a summary of those Federal tax returns.

ITEM	1994	1995	1996	1997
Wages	$20,237.00	$15,721.00	$2,979.00	$8,493.00
Interest	$0	$290.00	$134.00	$487.00
Dividends	$57.00	$425.00	$427.00	$854.00
Taxable Refunds	$160.00	$0	$0	$0
Sch D	$50.00	$676.00	($3,000)	$14,142
AGI	$20,504.00	$17,112.00	$540.00	$23,976.00

CLINKSCALE submitted W-2 forms with his 1994 and 1995 income tax returns. The W-2s listed the same Employer Identification Number (EIN) and address, but different names. The 1994 W-2 was from Tower Cellular and showed $13,465.21 income, and the 1995 was from High Tower Group, Inc., DBA Cellular Solution and showed $11,341.68 income. Sheila CLINKSCALEs W-2 from YHA, Inc. showed: $6,771.59 income in 1994, the 1995, 1996, 1997 W-2s were from WRCS Payroll and showed income of $4,378.93 in 1995, $2,979.04 in 1996, and $8,493.14 in 1997.

b. CLINKSCALE did not file Federal Income Tax Returns for the years 1990 through 1993.

c. No gift tax returns were filed by James A. and Helen L. Pack, Veleria D. Clinkscale, Roosevelt L. Clinkscale, or Roy L. and Edna Jones.

d. No returns were filed by Ledge Records, Inc., Ledge Manufacturing, Inc., C & C Holdings, or The Jewels of the Plaza.

2. Public records of the Mahoning County Recorder's Office show that:

a. CLINKSCALE purchased Youngstown City Lot 11766 located at 31 Bruce Street, in June 1991, for $4,500.

b. CLINKSCALE obtained Youngstown City lot 4660, located at 329 Arlington Avenue, in November 1991, at no cost in a tax exempt exchange.

c. Sheila Jones purchased Campbell City Lot 6196, 229 Hamrock Drive, Campbell, Ohio, in August, 1991, for $37,000. She obtained a $37,877.00 mortgage from Centrust Mortgage Corporation. She sold this house in January, 1994, for $50,000.00.

3. Public records of the Trumbull County Recorder's Office show that:

a. Sheila CLINKSCALE purchased 2934 Anderson Morris Road, Niles, Ohio, in October 1994, for $95,000. She obtained a $30,000 mortgage from Home Savings and Loan.

4. Public records of the Trumbull County Auto Title Department show that:

a. In May, 1996, CLINKSCALE purchased a 1996 Toyota Land Cruiser with a list price of $51,406.25 with no lien. He traded in a 1995 Chevrolet Blazer and received a trade-in allowance of $18,500. CLINKSCALE

had purchased the Chevrolet Blazer in January 1995, the Blazer had a list price of $25,170.00 with no lien. He traded in a 1994 Chevrolet C1500 truck and received a $19,200 trade-in allowance. There is no record of CLINKSCALE or his wife owning a 1994 Chevrolet C1500 truck.

b. In August 1997, CLINKSCALE purchased a 1995 Dodge 1500 Ram pick up truck for $18,425.53 with no lien.

c. In December 1997, Sheila CLINKSCALE purchased a 1998 Toyota 4 Runner for $35,899.00 with no lien. She traded in a 1996 Toyota Land Cruiser and received a $29,869.00 trade-in allowance. There is no record of CLINKSCALE or his wife owning a second 1996 Toyota Land Cruiser. The 1996 Toyota Land Cruiser referred to in (a) above is still registered to CLINKSCALE and was observed at his residence in July, 1998.

d. Also in December 1997, CLINKSCALE purchased a 1998 Land Rover for $61,131.07 with no lien.

5. Records of the National City Bank (NCB) show the following

a. Currency transaction reports (CTRs) were filed by the bank on behalf of the CLINKSCALEs for the following transactions:

1. On February 15, 1996, $12,000 in cash was deposited to account 8442860009 in two separate transactions at different branches: $5,000 in cash was deposited and used to purchase a cashier's check made payable to Smith Barney, and $7,000 in cash was deposited and used

to purchase a cashier's check made payable to Smith Barney.

2. On March 28, 1996, $24,500 in cash was deposited to account 8442860009 in three separate transactions and then $34,000 in cash was withdrawn. These transactions were conducted at least three different branches: $9,000, $9,000, and $6,500 in cash was deposited, and then $34,000 in cash was withdrawn.

3. On May 24, 1996, $9,000 in cash was deposited at the Churchill branch. Later at the Niles Park Plaza branch, the $9,000 was withdrawn and $2,000 in cash was added and used to purchase a $11,000 cashier's check made payable to Denny Clegg Motors, Inc.

4. On July 31, 1996, $18,000 in cash was deposited in two separate transactions: $9,000 in cash was deposited to account 563452027 and $9,000 in cash was deposited to account 8442860009.

5. On September 10, 1996, $14,000 in cash was deposited to account 563452027 in two separate transactions at different branches: $9,000 in cash was deposited and $5,000 in cash was deposited.

6. On December 5, 1996, $15,000 in cash was deposited to account 563452027 in two separate transaction: [sic] $7,000 in cash was deposited and $8,000 in cash was deposited.

7. On November 3, 1997, $12,500 in cash was deposited to account 563452027: $9,000 and $3,500 in cash were deposited in separate transactions at different branches.

b. CLINKSCALE opened accounts in the name of C & C Holdings, Inc., Ledge Manufacturing, Inc., and Ledge Records, Inc. The Ledge Records and Ledge Manufacturing accounts were opened in December 1994, and the C & C account was opened in September 1995.

c. CLINKSCALE deposited in excess of $800,000 to his and his wife's accounts at NCB during 1994 through 1997, the majority of which was in cash. In excess of $600,000 was deposited to a checking account, (account # 563452027) in the name of Sheila CLINKSCALE, and in excess of $100,000 was deposited to the joint savings account (account # 8442860009) in the name of Jantz or Sheila Clinkscale.

d. CLINKSCALE deposited checks from The Hightower Group in 1994 and The Cellular Solution in 1995. Some of these checks were identified as payroll checks and others were marked "loan repayment" in the memo section.

6. Records obtained from The Home Savings & Loan Company show that Sheila CLINKSCALE obtained a home mortgage loan of $30,000 on the purchase of 2934 Anderson Morris Road, Niles, Ohio. The settlement statement for the purchase shows a downpayment on the house of $65,188.16. This downpayment consists of a $8,000 check from R.L. Clinkscale drawn on First Federal Savings Bank, a $4,000 cashier's check from Society Bank in the name of Roosevelt Clinkscale, a $8,000 check from Roosevelt L. Clinkscale drawn on Bank One, a $25,188.16 [sic] drawn on CLINKSCALEs checking account at NCB, and a $20,000 check from Helen and James Pack drawn on Bank One. As part of the loan application James and Helen Pack signed a gift letter on September 21, 1994,

stating "James A. and Helen L. Pack (stepfather/mother) hereby gives Sheila and Jantz S. Clinkscale a gift of $17,000 to be used for purchase of a home located at 2934 Anderson-Morris Rd., Niles, OH 44446. It is further understood that this gift shall not be required to be repaid to the grantor". A second gift letter dated September 21, 1994, states "Roosevelt and Veleria Clinkscale (brother/mother) hereby gives Sheila and Jantz S. Clinkscale a gift of $48,000 to be used for purchase of a home at 2934 Anderson Morris Rd., Niles, OH 44446. It is further understood that this gift shall not be required to be repaid to the grantor". Currency Transaction Reports filed by financial institutions indicate that on September 19, 1994, James Pack deposited $15,000 in cash to his accounts at Bank One Youngstown, and that on October 18, 1994, Roy L. Jones deposited $20,000 in cash to his account at Mahoning National Bank. Records obtained of the CLINKSCALEs accounts at National City Bank show a deposit of a $20,000 check, dated October 21, 1994, from Roy and Edna Jones drawn on Mahoning National Bank.

7. Records obtained from Bank One show the following:

a. CLINKSCALE opened a savings account in September 1996, and a checking account in the name of The Jewels of the Plaza in October 1996. A total of $50,892 ($33,000 in cash) was deposited to the savings account during 1996 and 1997. A total of $193,100 ($180,255 in cash) was deposited to the account titled The Jewels of the Plaza during 1996 and 1997.

b. Currency Transaction reports (CTRs) were filed on the CLINKSCALEs as follows:

1. On 5/30/97, $34,000 in cash was deposited to the account titled The Jewels of the Plaza in four transactions: $9,000 was deposited at the Eastwood Mall Branch at 2:02 pm, $9,000 was deposited at the Liberty Branch at 2:27 pm, $9,000 was deposited at the Belmont Branch at 2:39 pm, and then $7,000 was deposited at the Main office in downtown Youngstown at 3:23 pm.

2. On 6/3/97, $17,000 in cash was deposited to the account titled The Jewels of the Plaza in two transactions: $9,000 was deposited at the Main office in downtown Youngstown at 3:25 pm, and $8,000 was deposited at the Market Street Branch at 3:43 pm.

3. On 8/7/97, $16,000 in cash was deposited to the account titled The Jewels of the Plaza in two transactions: $9,000 was deposited at the Market Street Branch at 1:51 pm, and $7,000 was deposited at the Boardman branch at 2:21 pm.

4. On 12/4/97, $52,755 in cash was deposited to the account titled The Jewels of the Plaza in seven transactions: $9,000 was deposited at the Eastwood Branch at 9:07 am, $9,000 was deposited at the Liberty branch at 9:29 am, $9,000 was deposited to the Market Street Branch at 10:08 am, $9,000 was deposited to the Main office in Youngstown at 10:44 am, $8,955 was deposited to the Belmont Branch at 12:20 pm, $7,500 was deposited to the Wickliffe Branch at 2:14 pm, and $300 was deposited at the Wickliffe Branch at 2:20 pm.

c. Cash deposits were made to the account titled The Jewels of the Plaza in 1997 as follows: 4/21 – $3,000; 5/14 – $5,000; 5/30 – $34,000; 6/3 – $17,000. This cash was deposited to cover checks written to Smith Barney as follows: 5/5 – $4,000, 5/29 – $3,000, and 6/2 – $50,000

d. Cash deposits totaling $21,000 were made to the account titled The Jewels of the Plaza on August 7 and 8, 1997 as follows: 8/7 – $16,000, and 8/8 – $5,000. On August 7, 1997, a check from this account was written to Cole Brothers Dodge in the amount of $19,500. The memo section of the check shows Truck.

e. A cash deposit of $6,200 was made on December 1, 1997, to the account titled The Jewels of the Plaza to cover a check for $6391.73 written on November 29, 1997, to Warren Toyota. The memo section of the check shows '4-Runner'.

f. On December 4, 1997, $52,755 in cash deposits were made to the account titled The Jewels of the Plaza. On December 5, 1997, $2,750 in cash was deposited at the Eastwood branch. Also on December 5, 1997, a check for $60,000 was written to Land Rover Akron. The memo section shows 'Range 1055'.

g. On December 16, 1997, $9,000 in cash was deposited to the account titled The Jewels of the Plaza to cover a check written the same day to Warren Toyota for $8,877.71. The memo section shows '4-Runner'.

h. On December 23, 1997, $3,000 in cash was deposited to the account titled The Jewels of the Plaza to cover a check written to Land Rover Akron for $2,669.97. The memo section of the check shows 'Accessories 1392'.

8. Records obtained from Smith Barney indicate that CLINKSCALE opened a brokerage account in November 1995. A new account application for this account was submitted showing Jantz CLINKSCALE's annual compensation as $45,000 from Cellular Solution and Sheila CLINKSCALE's income as $40,000 from Southside Hospital. This

application shows total annual income of $100,000, and a total estimated net worth of $100,000. In September 1997, another new account application was completed. This application lists Jantz CLINKSCALE as self-employed at an annual compensation of $140,000, but lists no compensation for Sheila. The application lists the CLINKSCALE's total estimated net worth as $1,000,000. The statements for this account show deposits of $8,000 in 1995, $42,650 in 1996, and $65,000 in 1997. These deposits were from checks, cashiers checks, and wire transfers from the CLINKSCALEs accounts at NCB and Bank One.

9. Records obtained from the National Crime Information Center (NCIC) show that CLINKSCALE was arrested in Ohio in 1986 and charges with robbery. In 1988 CLINKSCALE was arrested in Florida and charged with possessing crack cocaine and marijuana. No disposition of these charges is listed on NCIC.

III. Affiant's Training and Expertise

Based upon the affiant's training, experience, and participation in other financial investigations and based upon the experience of agents of the FBI and DEA who have conducted numerous investigations involving large amounts of narcotics and/or assets acquired through narcotics trafficking, this affiant knows:

1. Individuals who deal in illegal controlled substances maintain books, records, receipts, notes, ledgers, bank records, money orders, and other papers relating to the manufacture, transportation, ordering, sale, and distribution of illegal controlled substances. These individuals commonly "front" (provide on consignment) illegal controlled substances to their clients and thus keep some

type of records concerning monies owed. The aforementioned books, records, receipts, notes, ledgers, etc. are maintained where the dealer in illegal controlled substances has ready access to them, such as on his person, in his motor vehicles, or place of operation;

2. It is common for individuals who deal in illegal controlled substances to secrete contraband, proceeds of drug sales, and records of drug transactions in secure locations within their residences and/or motor vehicles for ready access and to conceal such items from law enforcement authorities;

3. Individuals who deal in illegal controlled substances routinely conceal in their residences caches of illegal controlled substances, large amounts of currency, financial instruments, precious metals, jewelry, and other items of value and/or proceeds of illegal controlled substance transactions relating to obtaining, transferring, secreting, or spending of large sums of money made from engaging in illegal controlled substances activities;

4. Individuals who deal in illegal controlled substances profit from the sale of illegal controlled substances and they attempt to legitimize these profits. To accomplish these goals, these individuals utilize false and fictitious business records, foreign and domestic banks, securities, cashier's checks, money drafts, letters of credit, brokerage houses, real estate shell corporations, and business fronts;

5. Individuals who deal in illegal controlled substances commonly maintain addresses or telephone numbers in books or papers which reflect names, addresses, and/or telephone numbers for their associates in their illegal organization. In addition, these individuals utilize telephone systems to maintain contact with their

associates in their illegal business. These telephones are often in the primary location of the individual's illegal business;

6. Individuals who deal in illegal controlled substances take or cause to be taken photographs of themselves, their associates, their property, and their product. These individuals usually maintain these photographs in their possession or at their residences;

7. Individuals who deal in illegal controlled substances usually keep paraphernalia for packaging, cutting, weighing, and distributing illegal controlled substances. This paraphernalia includes scales, plastic bags, and cutting agents.

8. Individuals who deal in illegal controlled substances commonly have on their person, at their residences, in their motor vehicles, and/or, at their businesses, firearms and other weapons used to protect and secure their property and product;

9. Unexplained wealth is probative evidence of crimes motivated by greed, in particular dealing in illegal controlled substances.

10. Individuals who deal in illegal controlled substances often act with the intent to evade their taxes, file false Federal tax returns, or do not file Federal tax returns. Individuals who deal in illegal controlled substances often engage in financial transactions with the intent of carrying on an unlawful activity, committing a violation of Internal Revenue Code Section 7201 or Section 7206(1), or concealing the proceeds of specified unlawful activity. Individuals who deal in illegal controlled substances often purchase assets with proceeds from specified

unlawful activity and often place these assets in nominee names. Often times drug dealers place these assets in names of relatives and close acquaintances.

11. Individuals who deal with illegal controlled substances often purchase assets in a manner where the currency transaction reports or forms 8300 required by Federal law to be filed for transactions involving more than $10,000 are not filed with the Treasury Department. They also launder money from drug trafficking by purchasing assets disguising the sources of proceeds used in specific transactions or titling assets in the name of a nominee. Drug traffickers also use the proceeds from their activity to further the trafficking activity.

CONCLUSIONS OF AFFIANT

Based on my experience and expertise as a special agent and the facts detailed in this affidavit, the affiant concludes that JANTZ S. CLINKSCALE is currently operating a cocaine business with known and unknown individuals; CLINKSCALE is utilizing his residence (2934 Anderson Morris Road, Niles, Ohio) to store narcotics and conduct narcotics transactions, and that secreted in those areas mentioned in Attachment A of this affidavit are the items mentioned in Attachment B of this affidavit. I have probable cause to believe that the records mentioned in Attachment B are located at CLINKSCALEs residence based on the facts that he uses the residence address for his bank accounts, brokerage accounts, credit card accounts, income tax returns, and registered vehicles. There is probable cause to believe that CLINKSCALE has engaged in financial transactions designed to promote the carrying on of a specified unlawful activity or designed in

whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity or to avoid a transaction reporting requirements under state or federal law. There is also probable cause to believe that CLINKSCALE knowingly engaged or attempted to engage in monetary transactions in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity. In addition, there is probable cause to believe that CLINKSCALE committed violations of I.R.C. Sections 7201 or 7206(1) with respect to his 1994 through 1997 tax years. The items mentioned in Attachment B of this affidavit all constitute fruits, instrumentalities, and evidence of the commission of crimes against the United States, including violations of United States Code Title 21, Title 18, Title 26, and Title 31.

/s/ Gary L. Gruver
Gary L. Gruver
Special Agent, IRS-CID

Subscribed and sworn to before me
this 3rd day of August 1998.

/s/ James D. Thomas
UNITED STATES MAGISTRATE JUDGE

(SEAL)

U.S. Department of Justice

Federal Prison System

Federal Prison Camp

Boron, California 93516

December 24, 1997

Honorable Solomon Oliver, Jr.
United States District Judge
250 U.S. Courthouse
201 Superior Avenue
Cleveland, OH 44114

RE: MARTINEZ, Ariel Castanada
Reg. No.: 52685-060
Docket No.: 4:96CR410-03

Dear Judge Oliver:

On December 23, 1997, at approximately 9:30 p.m., the institution was conducting a count of the inmate population and determined that Ariel Casteneda Martinez was not at his assigned dorm. He was placed on escape status at 11:36 p.m.

Mr. Martinez was sentenced in the Northern District of Ohio on July 17, 1997, for Conspiracy to Distribute and Possess with Intent to Distribute Cocaine. The Court sentenced him to a 70 month term of imprisonment with 5 years of supervision to follow. Mr. Martinez was scheduled for release on January 8, 2002, by Good Conduct Time Release.

It should be noted that Mr. Martinez escaped from a minimum security facility. His escape did not involve violence, or endanger persons or property. The United States Marshal Service and local law enforcement agencies have been notified of his escape. If you have any questions or concerns regarding this matter, please do not hesitate to contact us.

Sincerely,

/s/ [Illegible] A. Clark, acting
Manny Cobos, Warden

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JANTZ S. CLINKSCALE, and SHEILA D. CLINKSCALE, Defendants.	)	CASE NO: 4:99CR368 JUDGE LESLEY WELLS UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT JANTZ CLINKSCALE'S MOTION TO SUPPRESS AND FOR THE RETURN OF ILLEGALLY SEIZED PROPERTY (Filed Jan. 18, 2000)

Now comes the United States of America, by and through its counsel, Emily M. Sweeney, United States Attorney for the Northern District of Ohio, and Assistant United States Attorneys, James V. Moroney and James L. Morford, and respectfully requests that this Honorable Court deny, for the reasons set forth in the attached memorandum, the defendant Jantz Clinkscale's Motion to Suppress and for the Return of Illegally Seized Property.

As an initial matter, defendant appears to be maintaining the necessity for a *Franks v. Delaware* hearing in contending that the affiant on the search warrant, Special Agent Gary L. Gruver of the Internal Revenue Service Criminal Investigation Division, showed a deliberate (or

reckless) disregard for the truth, and "intentionally and recklessly created various insinuations that he had to have known were false or unprovable." It is the position of the United States that the defendant has not established a need for a *Franks v. Delaware* hearing, and that there is no need for an evidentiary hearing on this suppression motion. It is the further position of the United States that there is more than ample probable cause demonstrated within the four corners of Special Agent Gruver's affidavit, permitting not only the search of defendant's home but the seizure of all evidence set forth on the inventory filed with the Court.

Respectfully submitted,

EMHLY M. SWEENEY
United States Attorney

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MEMORANDUM IN SUPPORT

Defendant Jantz S. Clinkscale, through counsel, filed a motion to suppress evidence seized from the search of his residence, and for the return of alleged illegally seized property taken in that search. He cites a literal laundry

list of defects with the warrant and the associated search. He alleges that the affidavit failed to set forth probable cause that defendant was a drug dealer, and also that the affidavit failed to demonstrate any basis that the items listed as things to be seized could be found on the premises. Defendant also asserts the warrant was overbroad, and failed to particularize items to be seized. In that connection, defendant contends, the warrant authorized a general or exploratory search of the defendant's home. Defendant further argues that agents seized items "that did not even fall within the generic descriptions given of items to be seized" (motion, ¶ 7).

Defendant's motion continues in ¶¶ 8-12 in contending that information set forth in the affidavit was distorted and slanted, showing deliberate and reckless disregard for the truth, and creating in an intentional reckless sense insinuations that the affiant knew to be false or unprovable. Defendant asserts (¶ 12) that the affiant did not connect defendant's home to drug activity, and that affiant's opinions were scant, conclusory, and insufficient (¶ 11).

Defendant's motion continues to attack various averments set forth in the affidavit under "Criminal Activity Detailed": ¶¶ 13-16 attack evidence included in the affidavit concerning the *Martinez-Castaneda* case (Case No. 4:96CR410, ND Ohio). In ¶ 17, defendant through counsel attacks information provided by one Marvin Reese, and in ¶ 18 asserts that the evidence of defendant's drug activity was incredible and unreliable.

Finally, defendant attacks the seizure of vehicles at defendant's home (¶ 19), and asserts that there was no probable cause to support a seizure warrant issued to the

Smith Barney investment firm for an account in the name Jantz S. Clinkscale, which warrant was issued approximately two weeks after the search of defendant's residence.

This Honorable Court is respectfully requested to find that none of defendant's assertions and contentions have merit, that the search of defendant's residence pursuant to a search warrant issued by United States Magistrate Judge James D. Thomas was premised upon probable cause, that the search was appropriately limited, and that the search was legally executed.

DETERMINATION OF PROBABLE CAUSE AND SUFFICIENCY OF THE AFFIDAVIT

As an initial matter, there are two factual inaccuracies in defendant's motion. For one, the motion seeks suppression of evidence obtained from the arrest of the defendant. While defendant was arrested upon return of the indictment on October 20, 1999, he was not arrested in connection with the search of his residence on August 4, 1998. There was no evidence obtained incident to an arrest at or in connection with search of defendant's residence. Also, defendant's motion asserts that the search of his residence occurred on August 3, 1998: that was the date that the warrant was obtained, and the search was conducted the following day.

While it is obvious that the search warrant in this case sought drug related evidence, including U.S. currency and jewelry believed to represent the proceeds of drug trafficking, the evidence sought was not in connection with Title 21 drug offenses. Instead, the evidence sought involved three distinct criminal violations: (1) money

laundering (Title 18, United States Code, Sections 1956 and 1957); (2) tax evasion and filing of false federal income tax returns (Title 26, United States Code, Section 7201 and 7206(1)); and (3) structuring of currency transactions (Title 31, United States Code, Section 5313 and 5324).

It is only with the money laundering offenses that defendant's generation of proceeds from drug trafficking constitutes an element of the offenses set forth in the warrant. In other words, only with Sections 1956 and 1957 would the agents have to provide evidence that the defendant was involved in drug activities, in order to generate proceeds as the specified unlawful activity (SUA) for the money laundering. While the agents may have believed that drug proceeds were the "likely source" of substantial unreported income, in support of tax charges, that likelihood (that drug proceeds constituted income obviously not reported on defendant's tax returns) was not an element of the tax charges. Similarly, agents did not need to establish that drug proceeds were the source of the currency being structured (except insofar as 31 U.S.C. §5322(b) provides a sentencing enhancement when the funds being structured come from an illegal activity). While the drug evidence in the search warrant affidavit was important, it is herein noted that its significance was limited and confined.

A determination of probable cause is made in view of and upon consideration of the totality of all of the circumstances and all of the information in the warrant. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In *Gates*, the United States Supreme Court held that probable cause to search was defined as a "fair probability" that contraband or other evidence of a crime will be found in the place cited. *Id.* The issuing judge or magistrate "may give considerable weight to 'the conclusion of experienced law enforcement

officers regarding where evidence of a crime is likely to be found' and is 'entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense.'" *United States v. Caicedo*, 85 F.3d 1184, 1192 (6th Cir. 1996), citing *United States v. Lawson*, 999 F.2d 985, 987 (6th Cir. 1993). The determination of probable cause by the magistrate is entitled to "great deference" by the reviewing court and should be scrutinized in a "realistic and common sense" manner. *United States v. Caicedo*, 85 F.3d at 1192, citing *United States v. Algie*, 721 F.2d 1039, 1041 (6th Cir. 1983).

Under these authorities and principles, there was clear probable cause for the issuance of a search warrant for defendant's residence, and the determination by United States Magistrate Judge Thomas to issue the warrant should not be disturbed. Defendant waxes at length attacking the section of the affidavit entitled "Criminal Activity Detailed." In response, as to the Castaneda case, affiant Gruver had available to him a DEA summary report (attached as U.S. Motion 1) and the proffer interveiw of Castaneda (U.S. Motion 2). In the latter exhibit, Castaneda specifically identified Clinkscale as the intended buyer of the cocaine being transported across the United States; Castaneda stated that there were four to five previous transactions between himself and Clinkscale. The slip of paper with Clinkscale's address, and the presence of Clinkscale's pager number and unlisted home telephone number in the memory of Castaneda's cell phone, represent corroboration of Castaneda's testimony as set forth in his proffer. Further, Special Agent Krebs of the DEA meticulously corroborated the testimony of the Hispanics (Fierro-Lopez, Coronado-Chavez, and Castaneda-Martinez) with hotel, phone, and

credit card records. Moreover, Castaneda identified Clinkscale's drop-site as a house near a McDonald's and a Taco Bell, at which Clinkscale would unload the cocaine from the vehicle being used (this same house was identified by the CW in the affidavit, section I, ¶ 3, as Clinkscale's duplex).

Defendant complains that affiant Gruver did not tell Magistrate Judge Thomas that as of August 3, 1988, Castaneda had escaped from federal prison, and that at Castaneda's sentencing, the United States had recommended intensive drug treatment for him. As to the first matter, Special Agent Gruver did not even know of the escape of Castaneda (as an IRS-CID agent, he had not worked the Castaneda case and there would have been no reason for any agency or officer to adverse him that Castaneda had escaped). As to the latter point, drug treatment is a routine and uniform recommendation in the case of any defendant involved in multikilogram drug trafficking. These alleged omissions have little or nothing to do with Magistrate Judge Thomas' probable cause determination on August 3, 1998, when he issued the warrant.

Defendant also attacks the testimony of Marvin Reese, including at ¶ 2 of this section of the affidavit. Again, affiant Gruver had available to him two memoranda of the December 26, 1997, interview of Reese, one prepared by FBI Special Agent McCann and the other by BCI Special Agent Patton (attached as U.S. Motion 3 and 4). The affiant advised Magistrate Judge Thomas regarding the arrest and incarceration of Marvin Reese. The affiant also corroborated Reese's information regarding the location of Clinkscale's residence, Clinkscale's pager

number, and vehicles owned and operated by Clinkscale. This testimony, along with all the other information provided, was reliable and contributed to the probable cause determination.

In the same vein, the information provided by the CW (affidavit section I, ¶ 3) corroborated Castaneda and Reese, and extensively corroborated the financial information gathered in the investigation. The CW knew the approximate purchase price and date of purchase for Clinkscale's house in Niles, Ohio, and was aware of the extensive improvements made by Clinkscale. The CW identified Clinkscale's vehicles, and knew of the purchase of the Land Rover in December, 1997. The CW further identified as Clinkscale's one of the weapons found in the search of the residence (the Glock .45 caliber) and also was aware of the duplex located near the Taco Bell which was owned and used by Clinkscale.

In short, the "drug" evidence was clearly sufficient, in connection with the financial evidence, to permit a search of defendant's residence for the items identified in "property to be seized-drug related."

As to the financial evidence, it appears that even defendant concedes (at ¶ 5 of his motion) that probable cause existed to search for the fruits and evidence of financial offenses. Defendant filed no tax returns for 1990 through 1993, and he reported his own income on joint returns only in 1994 and 1995. He reported no income for himself on the 1996 and 1997 filed joint income tax returns. He reported wage income, during the entire period of approximately $13,500 in 1994, and $11,400 in 1995. Clinkscale and his wife put $65,000 down on the purchase of their home in 1994, and made extensive improvements

to raise the home's value to over $200,000. Clinkscale paid thousands of dollars for vehicles, including $61,121.07 in December, 1997, for a Land Rover. He structured over $800,000 in currency deposits to seven different banks at two financial institutions between 1994 and 1997. He deposited over $100,000 to a Smith Barney investment account in 1996-97. Clinkscale had no place of employment, no place of business, and used his home address extensively for bank accounts, and other financial records. There was clearly probable cause to search Clinkscale's residence for the "Property to be Seized-Financial Records" listed on the warrant.

Defendant further alleges that the warrant was overbroad, failed to particularize items to be seized, and authorized a general or exploratory search of defendant's home. These contentions are meritless. In many cases involving complicated financial schemes, including money laundering and structuring such as presented herein, searching agents may not know precisely what types of records, documents and evidence will fall within the scope of the particular scheme. In such a case, agents must be as descriptive and specific as possible, while at the same time limiting the warrants and affidavits to generic descriptions of documents and evidence. "[T]he degree of specificity required is flexible and will vary depending on the crime involved and the types of items sought. 'Thus a description is valid if it is as specific as the circumstances and the nature of the activity under investigation permit.'"

United States v. Henson, 848 F.2d 1374, 1383 (6th Cir. 1988), citing *United States v. Blum*, 753 F.2d 999, 1001 (11th Cir. 1985). In *United States v. Ables*, 167 F.3d 1021, 1033-4 (6th Cir. 1999), the Sixth Circuit cited with approval

the Second Circuit opinion in *United States v. Riley*, 906 F.2d 841, 844 (2nd Cir. 1990), in which that Court held "the language of a warrant is to be construed in light of an illustrative list of seizable items." The Second Circuit went on to hold that "once a category of seizable papers has been adequately described, with the description delineated in part by an illustrative list of seizable items, the Fourth Amendment is not violated because the officers executing the warrant must exercise some minimal judgement as to whether a particular document falls within the described category." *United States v. Riley*, 906 F.2d at 845.

In the instant case, the discretion of the searching agents was limited to an illustrative list of seizable items, and therefore the warrant and its execution met the standards set forth in *Ables* and *Henson*. In fact, a review of the language regarding property to be seized in both cases shows remarkable similarity in specificity to Attachment B to the warrant in the instant case. In short, the warrant approved by Magistrate Judge Thomas was not overbroad, did particularize items to be seized, and did not authorize a general or exploratory "fishing expedition" at the defendant's home.

Defendant in ¶¶ 8-11 of his motion makes various allegations about affiant Gruver's representations in the affidavit, and also contends that Special Agent Gruver's opinions were scant and conclusory. First of all, insofar as defendant appears to be attempting to lay a foundation for a *Franks* hearing based upon omission of certain facts from the affidavit, defendant's position is not well taken. Omission of facts, such as those pertaining to credibility factors, cannot support suppression or a *Franks* hearing unless defendant can establish that the omissions were intentionally made in a deliberate attempt to mislead.

Mays v. City of Dayton, 134 F.3d 809, 815-16 (6th Cir.), *cert denied,* 118 S.Ct. 2352 (1998); *United States v. Atkin,* 107 F.3d 1213, 1216-17 (6th cir. 1996); and *United States v. Martin,* 920 F.2d 393, 398 (6th Cir. 1990).

As to Special Agent Gruver's opinion, he was clearly qualified to render such. As a special agent with ten years of IRS-CID experience, and participation in numerous tax and controlled substances investigations, he was qualified to render opinions and his opinions were important to a determination of probable cause. See, *United States v. Caicedo,* 85 F.3d 1184 (6th Cir. 1996); *United States v. Martin,* 920 F.2d 393 (6th Cir. 1990); *United States v. Hoyland,* 914 F.2d 1125, 1127 (9th Cir. 1990); *United States v. Villegas,* 700 F.Supp. 94, 99 (N.D. NY 1988).

EXECUTION OF THE WARRANT

Defendant further asserts that the officers seized items not within the generic descriptions on Attachment B to the warrant, and also alleges that vehicles were seized which were not included in the warrant. First of all, as to the seizure of items outside the descriptions in the warrant, defendant provides no specific allegations. The U.S. currency, jewelry, and financial documents were specifically provided for in the warrant. The firearms and the marijuana were contraband, and seizable under the plain view doctrine. Defendant should plead with particularity as to other items seized, allegedly, outside the scope of the warrant.

As to the vehicles, the seizure was supportable on several grounds. First of all, the Toyota Land Cruiser and the Toyota Land Rover were parked in the garage of the home at the time of the search. Where a warrant has been

obtained to search a residence with an enclosed garage, any automobiles parked therein which might contain legitimate objects of the search may also be searched. *United States v. Evans,* 92 F.3d 540, 543 (7th Cir. 1996); *United States v. Gottschalk,* 915 F.2d 1459, 1461 (10th Cir. 1990). Once the vehicles were searched, 56.9 grams of marijuana were discovered in the Land Cruiser, and another 49.9 grams of marijuana in the Land Rover. In the Attic crawl space over the garage, another 235.5 grams of marijuana were discovered, packaged for resale, and, as well, an AK 47 with two loaded magazines. The agents were clearly permitted to conclude that the vehicles were being used to transport marijuana, and to transport marijuana as part of a trafficking or distribution scheme given the packaging of the marijuana over the cars and the presence of weapons in the vicinity.

Even assuming that only the marijuana in the cars was relied on as a basis for seizure of the vehicles, defendant neglects to point out that he has a prior felony for cocaine distribution. That being so, the penalty on a 21 U.S.C. § 844(a) possession charge would be two years, and the vehicles would be seizable under 21 U.S.C. § 881(a).

THE SMITH BARNEY SEIZURE WARRANT

Defendant also asserts that there was no probable cause for the seizure warrant, issued August 21, 1998, by Magistrate Judge Thomas (Case No. 4:98M6044). In brief, the affidavit for this seizure warrant, seeking funds in an investment account at Smith Barney, was the same affidavit as used to obtain the search warrant for defendant's residence, but updated for the results of the August 4, 1998, residence search. Magistrate Judge Thomas was advised that in the residence search, agents obtained

guns, marijuana, $327,126 in U.S. currency, jewelry and financial records. Defendant also alleges that seizure of the funds from Smith Barney constituted "fruit of the poisonous tree," i.e., that the seizure was tainted by the prior wrongful search of the residence.

Even if the probable cause determination was a close case, and in this case it was not, any doubt was eliminated by the results of the residence search at the Clinkscale's home. Since the residence search was proper and legitimate, the follow-up seizure at Smith Barney was also. After obtaining an arsenal of firearms and a bullet-proof vest, and a satchel of cash that represented, in denominations of tens and twenties, over five times the accumulated reported adjusted gross income on the Clinkscale's 1994 through 1997 tax returns, probable cause was a foregone conclusion.

THE GOOD FAITH EXCEPTION

Although it is the position of the United States that no error occurred in the determination of probable cause, the Untied States asserts the good faith exception in *United States v. Leon,* 468 U.S. 897 (1984) should the Court find error. The searching agents relied in good faith upon a warrant properly issued by United States Magistrate Judge in conducting the search of the Clinkscale residence. The Leon opinion sets out four exceptions or limitations where the good faith exception is not available: (1) where the supporting affidavit contained knowing or reckless falsity; (2) where the issuing Magistrate failed to act in a neutral and detached fashion, serving as a rubber stamp for the police; (3) where the supporting affidavit did not provide the Magistrate with a substantial basis for determining the existence of probable cause; and (4) where

the officers' reliance on the warrant was neither in good faith nor objectively reasonable. *United States v. Leake,* 998 F.2d 1359, 1366 (6th Cir. 1993).

It is clear that in this case there were no knowing or reckless false statements in the affidavit. Furthermore, there is no evidence that Magistrate Judge Thomas acted as a mere rubber stamp. The affidavit was not a "bare bones" affidavit, and provided a substantial basis for finding probable cause. Finally, in the instant case the searching officers' reliance on the warrant was in good faith and objectively reasonable.

For all of these reasons, it is respectfully submitted that the good faith exception in *Leon* should apply, should the court find there was no probable cause to support the search of the residence.

CONCLUSION

The attention of the court is drawn to the opinion in *United States v. Hoyland,* 914 F.2d 1125 (9th Cir. 1990) as presenting facts and circumstances very similar to the instant case. In *Hoyland,* the Court specifically noted that the affiant was a state narcotics agent with 15 years police experience. He was investigating a structuring currency scheme being conducted by a high school science teacher. The agent obtained an initial search warrant for the Hoyland's bank records and safe deposit records. In obtaining this warrant, based on structured financial transactions, "agent Roth declared that on the basis of his training, experience, and knowledge, he was of the opinion that Hoyland was part of a much larger organization involved in the drug traffic and the laundering of its proceeds." *United States v. Hoyland,* 914 F.2d at 1127. In

assessing probable cause for these warrants, the Ninth Circuit stated

> plainly at this stage of the investigation there was probable case for the warrant to issue. A high school teacher, living in modest circumstances, was depositing large sums of cash and making exchanges of bills in ways that justified an agent of Roth's experience concluding that here in all probability was a money launderer for a drug ring.

United States v. Hoyland, 914 F.2d at 1128. Based on initial searches, follow-up warrants were then obtained including one to search Hoyland's residence. The Court also sustained a finding of probable cause for these searches, finding

> there is no doubt that these warrants, too, were based on probable cause. In today's America, a pattern of cash deposits and exchanges that have no obvious purpose except the avoidance of detection, plus the secreting of large amounts of cash in safe deposit boxes, all carried out by a man in modest circumstances, do not establish criminality but do give rise to a reasonable belief that the man is engaged in criminal conduct. *Id.*

The evidence gathered and presented in the affidavit was forceful and conclusive: that Jantz Clinkscale was engaged in drug trafficking and that he was structuring the proceeds in such activity into and out of various bank accounts, acquiring assets, and changing the form and location of drug proceeds by purchasing selling and

exchanging various assets. The determination of probable cause for the search of his residence should be sustained.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JANTZ S. CLINKSCALE, Defendant.	) CASE NO. 4:99cr368)) JUDGE) LESLEY B. WELLS) **REPLY TO GOVERNMENT'S BELATED RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS**) (Filed Feb. 22, 2000)

As an initial matter it should suffice here to simply note: the fact that a law enforcement officer is experienced, or simply says he is (the case here), does not require any Court to accept all his suspicions and hunches as reasonable. Nor does even very real experience mean that an agent's perceptions are justified by objective facts. Because this is so, a judicial officer must view with extreme caution naked assertions based on information supplied by people in custody, or who are under suspicion because of their own crimes. The same is true of those who supply information in proffer situations in exchange for various types and forms of leniency and other considerations. Clearly this was the situation with reference to at least two (2) of the sources relied on in the affidavit issued in this case. The reference here is to Marvin Reese and Ariel Martinez-Castaneda.

All this is especially so when the information contributed and relied on is as stale as what we have here. Cf.,

United States v. Payne, 181 F.3d 781 (6th Cir. 1999). Also, simply because one can identify where a target lives, the type of car they drive, the places they frequent and the like (all of which, by and large, is public information), can hardly be said to corroborate anything.

Simply put, no one should accept as true, on faith alone, what some admitted drug dealer says about another person. This is especially so when it relates to, for example, a "drug dealer" stating that once upon a time (or even that on a number of occasions) he/she purchased drugs from the target. This is particularly so when there is no possible proof these things happened and the reference to the alleged activity is dated and stale by almost a year or more.

On the other hand, while the government made these various representations with reference to Castaneda (who stated he delivered drugs to Jantz Clinkscale in the past and was planning on delivering drugs in 1997 when he was arrested), the fact that the government says those drugs were to be delivered to a location owned by Jantz Clinkscale, near Youngstown State University, is a significant flaw in the government's thesis. This follows because if these drugs were to be housed in a place that was to be entered by the use of a garage door opener, then clearly it could not be the premises owned by Jantz Clinkscale near the university because there was no garage on those premises.

The effect of this fact is that it also reduces the information supplied by Castaneda, who was said to have been waiting to be supplied with a garage door opener, to a cannon fodder level.

I

Next, in counsel's "Memorandum In Support," we are being told that the generic descriptions of items to be seized was alright because although people like Cox (or whoever the alleged confidential source is), Marvin Reese, and Ariel Martinez-Castaneda could only supply information that was truly stale about events that happened (if they ever did) at places other than the defendant's home, it was reasonable to believe, not only that Jantz Clinkscale made drug deals with them, but that proof of his dealings with them would be located in his home.

Now it can be assumed from the failure to particularly describe the funds used by Reese and the confidential source, and the failure to generate any records, that no descriptions of these items was even possible.

Thus it follows there was no basis set forth in the affidavit that (1) connected Jantz Clinkscale's home or his vehicles to any drug activity; or (2) that created any basis for a belief drug evidence could be found in a search.

With this being so, the statement that the search made "was appropriately limited" (as the government argues, **Response, p.4**), raises the questions: what was it limited to and what limiting language is being relied on as the predicate for that statement?

II

As to the sterile argument that we are contending the search here was made incident to an arrest, the statement in our *Motion* that suggests Jantz Clinkscale was arrested was clearly a mistake. Next, the fact that we listed the

search as having occurred on the 3rd rather than the 4th of August falls in the same trivial category.

As to the statement that the warrant sought, not evidence of drug dealings and the like, but rather sought evidence of money laundering, tax evasion and structuring, it may come as a surprise to counsel-opposite that **18 U.S.C., Section 1956** is a concealment statute, not a spending statute. The point being, the facts alleged in the affidavit showed the defendant had arguably engaged, as the government claimed therein, in a number of very open and notorious business transactions, which the government believed (or said they did) were consummated with drug proceeds. This is important because when viewed in that context, only evidence that showed money had been washed would be seizable evidence of money laundering. With this being so, how can it be said, *e.g.,* that there was a nexus between the seized money and any money laundering activity?

Also, counsel is at a loss as to what the government could have been looking for to prove false income taxes had been filed that was not already in their possession. And, what evidence could they have been looking for to prove transactions had been structured in the past?

The bottom line here is, it cannot be denied the government was looking for evidence of the stale, very dated, drug transactions, the proof of which was based solely on the unsworn statements received in exchange for structured consideration – *i.e.*, was given in payment for. It thus becomes most clear the government's "Response In Opposition" to our *Motion To Suppress* translates into a collection of reasons why general and exploratory searches are outlawed by the Constitution.

CONCLUSION

Once the Court understands the information supplied by these alleged informants (none of whom were shown to have been "reliable informants") related to ancient dealings they claimed to have had with Jantz Clinkscale, the required conclusion will be that all of these statements were worthless. This follows not merely because undoubtedly they were given under the types of informal immunity the government gives the Gravanos, the Fratiannos and the Zagerias of the world, but also because the information provided by their revelations cannot pass even the most conservative staleness test. *Cf.*, **United States v. Payne, 187 F.3d 781 (6th Cir. 1999)**. Also, see **United States v. Allen, 168 F.3d 293 (6th Cir. 1999)**, which talks about the "barebones" and less than "barebones" affidavits of the type involved in this case.

Respectfully submitted,

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Attorney for Defendant Jantz Clinkscale

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply To Government's Belated Response To Defendant's Motion To Suppress* was faxed and mailed to the office of James V. Moroney, Assistant U.S. Attorney, 1800 Bank One Center, 600 Superior Avenue – East, Cleveland, Ohio 44114, this 22 day of February, 2000.

/s/ James R. Willis
JAMES R. WILLIS, ESQ.
Attorney for Defendant Jantz Clinkscale

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA, Plaintiff, v. JANTZ S. CLINKSCALE, Defendant.	CASE NO. 4:99CR0368 JUDGE LESLEY WELLS **WRITTEN EXCEPTIONS TO *ORDER DENYING MOTION TO SUPPRESS*** (Filed Feb. 25, 2000)

Of critical significance here, hence it is being called to the Court's attention lest the defendant may someday be held to have waived the assailments, is the fact that the Court's *Order* contains several serious factual flaws. These are most serious because they are relied on as premises for the Court's critical conclusion that the three alleged sources (none of whom were vouched for by the Court) were not only aware of where Jantz Clinkscale lived, but had actually delivered drugs to his home.

Here the Court wrote:

> Moreover, although the witnesses may have been motivated to lie, their information directly implicated Mr. Clinkscale and gave reasonable cause to believe evidence would be found at Mr. Clinkscale's house. Mr. Castaneda specifically identified Mr. Clinkscale as the intended buyer of the cocaine, had Mr. Clinkscale's address in his pocket, and knew where Mr. Clinkscale's house was located and what it looked like. (Defs' Mtn., Ex. B, at 3-5.) Furthermore, he testified he had on two separate occasions delivered drugs to Mr. Clinkscale's home and was endeavoring to make a third delivery when he was arrested. (Defs'

> Mtn., Ex. B, at 4.) Mr. Reese knew where Mr. Clinkscale lived, the cars he drove, and his pager number. (Defs' Mtn., Ex. B, at 6). . . .

Court's *Order Denying Motion To Suppress And To Return Property*, p. 6.

Our contention is that, neither, Castaneda, Reese, nor the so-called source, had ever been to the defendant's home for any purpose. Even more important, they certainly never delivered any drugs there as the Court states, which cannot be disputed by anything in the affidavit.

Now it is true that Castaneda said that more than a year before the search (indeed in 1996 on three occasions) he delivered drugs to the defendant (as the Court says, *Order*, p. 2). Moreover, there is nothing said in the affidavit that provides even slight support for the conclusion any drugs referred to by any of the alleged sources could be connected to defendant's home. Granted, in the affidavit it was said the car in which the drugs were contained would be "delivered . . . to Clinkscale . . . [at] a house near McDonald's" (**Affidavit, p. 4**), but this is the house referred to by the other alleged source that was *owned by*, not *lived in by*, Clinkscale and was located near Youngstown State University.

Next, Marvin Reese, who was interviewed in 1997, could only say "Clinkscale lived in Niles, Ohio" (**id., 6**). Obviously, that's all he knew about where Jantz Clinkscale lived. He certainly never said he had been there or had, s the *Order* states, received drugs there. On the other hand, the grim fact is Jantz Clinkscale does not live in Niles, Ohio, he lives near Niles, Ohio.

As to the cooperating witness (who we believe to be Sylvester Cox), there is nothing in the affidavit that even suggests he had ever been to defendant's house for any purpose. Obviously he did not know where it was located. Equally obvious is the fact that he only knew things about this house which could have been picked up from general gossip.

Distilled then, there is nothing in the affidavit that shows, as the Court determined, that these paragons of virtue actually knew where Jantz Clinkscale lived or had ever been near the house.

II

Also, it should be emphasized that the affidavit fails to note the criminal history of any of the alleged sources. Indeed, it cannot be denied that, at least as to Reese and Cox, their history is extensive and Reese and Castaneda were actually under indictment when they got the call to government service. Yet, not only did the affiant fail to vouch for them, he failed to reveal in his affidavit certain facts known, or that should have been known, about them, that was relevant to their credibility.

Granted the spin we put on this, particularly in light of the fact that Castaneda's credibility was reduced even further by his escape (hence, his unavailability), is that the end effect was the Magistrate was deceived. On the other hand, who can say that if the Court had affirmatively been made aware that, in addition to the fact that what these alleged sources contributed related to stale transactions (if indeed they ever occurred), the affiant could not vouch for them based on past experiences.

For surely they were not registered with the government as informers. And, all of them lacked any history of cooperating with the authorities. Our point being there was nothing these alleged sources told the affiant, who himself did not represent them to be reliable, that created a reasonable inference that drugs and anything related to illegal drug activity would be found in a search of this defendant's home.

III

Also counsel objects to the Court's failure to conduct a Hearing that related to issues other than our challenge as to the sufficiency of the affidavit. This is particularly important since we have not abandoned our position that things not described in the warrant were unlawfully seized (by officers acting on their own authority). In our judgment, while it is certainly arguable that the cars and the money were properly seized, the conclusion this was so requires factual findings that, in our judgment, cannot be resolved on the basis of the written submissions before the Court. This is especially so since at least one of the cars seized was not in Jantz Clinkscale's name, hence, any offense the wife may have committed with reference to the marijuana would have been a misdemeanor.

IV

CONCLUSION

So that there can be no mistake, counsel objects to any and all factual findings made in the Court's *Order*.

Respectfully submitted,

/s/ James R. Willis
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JANTZ S. CLINKSCALE, Defendant.	) CASE NO.: 4:99CR368) JUDGE LESLEY WELLS) *UNITED STATES' MOTION TO CLARIFY ORDER DENYING MOTION TO SUPPRESS* (Filed June 9, 2000)

Now comes the United States of America, by and through its counsel, Emily M. Sweeney, United States Attorney for the Northern District of Ohio, and Assistant United States Attorney, James V. Moroney, and respectfully requests that this Honorable Court clarify a finding of fact contained at page six (6) of this Court's Order Denying Motion to Suppress and to Return Property, filed February 24, 2000. The reasons for this request are set forth in the attached Memorandum.

Respectfully submitted,

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United States Attorney

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MEMORANDUM

Undersigned counsel for the United States submits this memorandum in support of the instant motion to clarify a statement of fact contained in this Court's order which denied defendant's motion to suppress.

As background, federal agents executed a federal search warrant on defendant's residence at 2934 Anderson-Morris Road in Niles, Ohio, on August 4, 1998. Premised in significant part on evidence obtained from that search, Jantz S. Clinkscale was indicated on 31 felony counts on October 20, 1999. On or about December 29, 1999, the defendant moved to suppress evidence obtained from the residence search, and the United States responded in opposition on January 18, 2000.

On February 24, 2000, this Court issued its order Denying Motion to Suppress and to Return Property. In its order, the Court discussed certain evidence included in the search warrant affidavit in Section I.A.1., which related to the search and seizure of 25 pounds of cocaine delivered to Youngstown, Ohio, by one Ariel Martinez-Castaneda (hereinafter, Castaneda). Castaneda was arrested on December 10, 1996, attempting to deliver the cocaine to Jantz Clinkscale, and Castaneda agreed to cooperate and provide information to law enforcement. The search warrant affidavit further contained statements by Castaneda from his proffer interview after his arrest.

Discussing the information provided by Castaneda, at p. 6 of its Order, the Court concluded that Castaneda specifically identified Clinkscale as the intended buyer of the cocaine, and further he had Clinkscale's address in his pocket. The Order further stated that Castaneda "knew

where Mr. Clinkscale's house was located and what it looked like." The Order continued "furthermore, he [Castaneda] testified he had on two separate occasions delivered drugs to Mr. Clinkscale's home and was endeavoring to make a third delivery when he was arrested."

Section I.A.1. of the affidavit contained the following statement:

> Martinez-Castaneda picked up the car and delivered it to CLINKSCALE to a house near a McDonald's restaurant and a Taco Bell that was brown in color and had fake brick. Martinez-Castaneda stated that he would always hand the keys to the car to CLINKSCALE and that Clinkscale would take the car in back of the house to take the drugs out of the car. Sometimes he [Castaneda] would go to the McDonalds or the Taco Bell to eat while CLINKSCALE removed the drugs.

The information provided by Castaneda was in reference to two actual deliveries of cocaine to Clinkscale, occurring on November 19, 1996 and again on November 29, 1996. Castaneda was delivering a third quantity of cocaine on December 10, 1996, when he was arrested on his way to deliver the cocaine to Clinkscale's drop site/stash house.

The information that Castaneda provided was corroborated by, and related to, the statement by the cooperating witness (CW) contained in the affidavit at Section I.A.3. The cooperating witness (CW) advised affiant Gary L. Gruver that "Clinkscale owns a duplex on Arlington Avenue across from Youngstown State University and behind the Taco Bell which he deals out of and uses as a stash house."

The problem that arises is that the Court's reference to Castaneda delivering drugs "to Mr. Clinkscale's home" could erroneously be read as finding that Castaneda delivered cocaine to 2934 Anderson-Morris Road, which was Clinkscale's home since its purchase in October, 1994. Castaneda did not say that he delivered drugs to Clinkscale's home; he said that he delivered drugs to the house which Clinkscale was apparently using as a stash house or drop site.

Given that Clinkscale's guilty plea was a conditional plea, reserving his right to appeal this Court's denial of his motion to suppress, it is the position of the United States that the cited reference in the Court's order should be clarified. Although counsel for the United States does not mean to suggest how the Court's order should be clarified, it is respectfully suggested that deletion of the reference to delivering drugs to Clinkscale's home would not change the result in the Order. Alternatively, changing the order to reflect that Castaneda on three occasions delivered or attempted to deliver cocaine to property controlled by Clinkscale, or to a house controlled by Clinkscale, would be more accurate. All the other references are correct, and, it is important to note, Castaneda did specifically identify Clinkscale as the buyer of the cocaine on all of the occasions, and Castaneda did have Clinkscale's home address (2934 Anderson-Morris Road) in his wallet when he was arrested. Castaneda had also called, on his cell phone, on the day of his arrest, the unlisted home telephone number of Jantz Clinkscale, which traced to 2934 Anderson-Morris Road.

Although this motion may be filed out of an overabundance of caution, it is specifically noted that almost immediately after the Court's order was issued, defendant filed

"Written Exceptions to Order Denying Motion to Suppress." In these written exceptions, defendant specifically asserted "our contention is that, neither, Castaneda, Reese, nor the so-called source, had ever been to the defendant's home for any purpose. Even more important, they certainly never delivered any drugs there as the Court states, . . . ". Since defendant has indicated in writing how he interprets his particular factual reference, it is respectfully suggested that the United States' motion should be granted and the reference clarified in order to prevent defendant from arguing this matter in his appeal to the Sixth Circuit.

Respectfully submitted,

EMILY M. SWEENEY
United States Attorney

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Clarify Order Denying Motion to Suppress was sent by regular U.S. Mail to James R. Willis, counsel for the defendant, at 595 Courthouse

Square Building, 310 Lakeside Avenue, N.W., Suite 350, Cleveland, Ohio, 44113, on this 9th day of June, 2000.

/s/ James V. Moroney
James V. Moroney
Assistant U.S. Attorney